

Dblgnar1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x
3 UNITED STATES OF AMERICA

4 v.

13 CR 351 (JSR)

5 JOVER NARANJO and
6 LUPERIO NARANJO, SR.,

7 Defendants.
-----x

8 New York, N.Y.
9 November 21, 2013
10 10:10 a.m.

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

18 BRIAN JACOBS

19 BRENT WIBLE

20 Assistant United States Attorney

21 DONALDSON CHILLIEST & McDANIEL

22 Attorney for Defendant Jover Naranjo
23 XAVIER DONALDSON

24 LAW OFFICE OF JOHN BURKE

25 Attorney for Defendant Luperio Naranjo, Sr.

ALSO PRESENT: TIINA SISAS, U.S. Department of Labor
MARIA ALVARADO, Spanish Interpreter
DAVID MINTZ, Spanish Interpreter
LUKE PHILLIPS, Paralegal Specialist, AUSA

Dblgnar1

(In open court; jury present)

THE COURT: Please be seated.

Good morning, ladies and gentlemen as always you were very prompt. I had an emergency matter that I did not expect to arise. There was nothing I could do about it, but I still apologize for keeping you waiting, but we are now ready to proceed.

Before we hear closing arguments, let me remind you that nothing that counsel says is evidence. The evidence which is now fully before you consists of the testimony of the witnesses, and the exhibits and there were also a few stipulations. Those are the only sources of evidence.

But before you begin your deliberations, it may be useful for you to hear what counsel believes you should draw from the evidence or from the lack of evidence, as the case may be.

This is their opportunity to, in effect, suggest arguments to you that you may find helpful or not, as the case may be.

I remind you as I have so often that the government bears the burden of proof; therefore, the government will go first, then we'll hear from both defense counsel and then the government will have a brief rebuttal. So we'll begin with the government.

MR. WIBLE: Thank you, your Honor. Good morning.

Dblgnar1

Summation - Mr. Wible

1 Over the past two weeks, you have heard overwhelming
2 evidence that Jover and Luperio Naranjo stole hundreds of
3 thousands of dollars by underpaying their workers.

4 The Naranjos paid their workers only a fraction of
5 what the law required and they kept the rest for themselves to
6 conceal their crime the defendants create ad web of deceit.
7 They submitted certified payroll documents that were loaded
8 with lies, they doctored checks and forged signatures on time
9 sheets to support the lies in the payrolls. They gave workers
10 IDs with other peoples names on them and they directed workers
11 to hide from investigators and to lie to them.

12 Over the course of this trial, the government has
13 proven beyond a reasonable doubt that these defendants plotted
14 together to pay their workers far less than the prevailing wage
15 and to keep investigators from learning the truth. You heard
16 and saw overwhelming evidence of the defendants' crimes. You
17 heard testimony about it, you saw documents that prove it. And
18 all that evidence has shown that Jover and Luperio Naranjo are
19 guilty as charged.

20 Now, this morning I want to do basically three things:
21 First, I want to go over what the evidence has shown. Second,
22 I want to discuss each defendant individually. Third, I'll
23 spend a few minutes talks about some specific elements of the
24 charges in the case.

25 Let's start by reviewing the proof.

Dblgnarl

Summation - Mr. Wible

1 Because the Ciena Project on 100th Street was funded
2 in part with federal stimulus money, the defendant's company,
3 Enviro & Demo Masters, was required to pay the workers the
4 prevailing wage. The company's contract with the general
5 contract, Lettire Construction, made clear this was a
6 prevailing wage project, this contract that Jover Naranjo
7 signed. You also heard Jover Naranjo's prior testimony that he
8 knew this was a prevailing wage job. He admitted he got the
9 prevailing wage schedule at the start of the project within a
10 week of entering into the contract.

11 Jover Naranjo also signed this document which federal
12 investigators found in Enviro & Demo's offices confirming he
13 understood exactly the wages he was required to pay, including
14 both compensation and benefits, demolition workers were
15 supposed to get a total of about \$49 an hour and workers who
16 carted debris out to the street were supposed to get a total of
17 about \$33 an hour and they were supposed to get overtime, time
18 and-a-half if they worked more than 40 hours a week.

19 Now, Luperio Naranjo was also fully aware this was a
20 prevailing wage job. He told Joaquin Pablo, one of the workers
21 to lie to investigators and say he was getting paid \$34 an
22 hour. Where did that number come from? It's the prevailing
23 wage for a Tier B worker.

24 But Enviro & Demo didn't pay the prevailing wage.
25 They paid most of their workers \$13 an hour. One worker got

Dblgnarl

Summation - Mr. Wible

1 \$15 an hour. And even though the defendants' employees worked
2 a lot more than 40 hours a week, none of them got overtime.

3 Now, because this was a prevailing wage demolition
4 project, the defendants were required to complete certified
5 payrolls showing that they had paid the prevailing wage.

6 They gave those payrolls to Lettire and Lettire Fed
7 Ex'd them to the New York City agency that was overseeing the
8 project, the New York City Department of Housing Preservation
9 and Development, or HPD, as well as to the United States
10 Department of Labor. And these certified payrolls were teeming
11 with lies.

12 First, the defendants listed lots of people on the
13 payrolls who didn't do any work on the project at all. Second,
14 they left off the payrolls most of the people who actually did
15 do the work. And third, they lied about the wages they paid
16 and the hours their employees worked.

17 These certified payroll documents weren't the only
18 false documents that the defendants created. They also forged
19 signatures on time sheets and doctored canceled checks. Why
20 did they do that? To make the lies in the certified payrolls
21 believable. So, let's talk about those lies and the fraudulent
22 documents that the defendants created.

23 As I said, the defendants' first category of lies was
24 listing lots of people on the payrolls who didn't actually work
25 at the job site. So who did the defendants list on these

Dblgnarl

Summation - Mr. Wible

1 payrolls? They put their family members and their friends.

2 Why did they do that? Because they didn't want the
3 city and the Department of Labor to know who the real workers
4 were, but they had to list somebody; otherwise, the city would
5 wonder how the work was getting done, so they put down people
6 they trusted.

7 Let's look at this certified payroll as an example.
8 Franklin Chiriboga didn't work at the job site. Several of the
9 workers told you that. Who was he? The super at Jover
10 Naranjo's building and what did the defendants do to make it
11 seem like he was working at the job site? Several months after
12 the project had begun, a security guard started working at the
13 site and workers had to use swipe cards to get inside.

14 The defendants had one of their workers, Angel Lozano,
15 use an ID in Franklin Chiriboga's name. Why did they do that?
16 So the swipe cards -- so the swipe card records would match up
17 with the certified payrolls, so it would look like Franklin
18 Chiriboga was working on the job site even though he really
19 wasn't.

20 The defendants also listed other people on the
21 payrolls who didn't do any work at the Ciena Project. Gloria
22 Janet Feijo is listed as a Tier B laborer, someone who carted
23 debris out of the building into the street, but she didn't do
24 that work. She was Jover Naranjo's wife. Lots of workers told
25 you that. Remember she worked in the office in Queens and gave

Db1gnarl

Summation - Mr. Wible

1 the workers their pay. She wasn't doing labor on the job site
2 on 100th Street.

3 And Jover Naranjo, Luperio Naranjo Sr. and Luperio
4 Naranjo Jr. are all listed on certified payrolls as Tier A
5 workers, but that's not true. The workers told you Jover
6 Naranjo only came to the site, at most, a few times. He owned
7 Enviro & Demo. He wasn't doing labor.

8 Let's talk about one of the days in particular that
9 Jover Naranjo is listed on the certified payroll as having done
10 labor. This certified payroll that Jover Naranjo signed,
11 swearing it was accurate, shows he worked for seven hours on
12 Thursday, September 10. But Jover Naranjo wasn't anywhere near
13 the job site that day. Where was he? At an equipment auction
14 in Mount Vernon, New York, an auction that began at 10 a.m. and
15 where he bought a \$27,000 truck. That's what he told Special
16 Agent Tara Donn who interviewed him at 3:45 that afternoon,
17 September 10, right outside of the auction house.

18 So when Jover Naranjo signed this certified payroll
19 swearing that he did seven hours of demolition work that day,
20 he lied. He didn't do demolition work that day or any other
21 day. And he told the very same lie on this sign-in sheet when
22 he said he worked seven hours on September 10.

23 So what about the Luperio Naranjo Sr. and Luperio
24 Naranjo Jr.? They weren't doing demolition work on the Ciena
25 Project either. Luperio Sr. was at that site but he over saw

Dblgnarl

Summation - Mr. Wible

1 the workers. He wasn't actually doing the labor himself.
2 Remember Luis Bermudez from the Department of Labor told you he
3 went to the job site on September 1. And the certified payroll
4 for that week shows that Luperio Naranjo Sr. did seven hours of
5 demolition work as a Tier A laborer, but what did Luis Bermudez
6 tell you? Luperio Naranjo Sr. wasn't doing labor, he was
7 outside in his van, supervising the workers and Luperio Naranjo
8 Jr. didn't do any work on the job site at all. Every single
9 worker who testified at this trial told you that.

10 So, who else is listed on the certified payrolls who
11 didn't actually work at the Ciena Project job site? Marcia
12 Gonzalez, that's Luperio Naranjo's daughter and Jover Naranjo's
13 sister and Maria Paula Feijo, Jover Naranjo's sister-in-law.

14 The defendants listed these women on the certified
15 payrolls because there were several women who actually worked
16 at the job site, and the defendants knew if they didn't put
17 some women on the certified payrolls, investigators would catch
18 them in their lies.

19 Now, at the same time the defendants lied about who
20 was working at the job site, they left off the certified
21 payrolls most of the people who actually worked there and
22 that's their second category of lies.

23 Who did work at the job site? You heard from six of
24 them and they told you about others, including the three women
25 workers and Pedro Pablo, Joaquin Pablo's brother. You know

Dblgnarl

Summation - Mr. Wible

1 these people worked at the job site, not only because they told
2 you that but because Juan Carlos Rodriguez, the man from the
3 union, video recorded them at the job site. And you saw some
4 still images from those videos, so let's look at a few of those
5 photographs.

6 Here is Antonio Torres working at the job site on
7 August 13. He's the guy on the left in the white helmet.
8 Joaquin Pablo is shown in the middle here, also photographed at
9 the job site on August 13, but neither one of them is on the
10 certified payroll for them. Here is the first page and here is
11 the second page. Their names are not there.

12 On August 18, Angel Lojano, Rolando Criollo, and
13 Clever Pauta were all photographed at the job site. The next
14 day, August 19, Richard Campoverde was photographed there.
15 None of them are on the certified payroll for that week. You
16 can look for yourselves. It's Government Exhibit 203.

17 And here, Ines Orbe with the black shirt and the white
18 mask and Blanca Lopez, two of the women who worked at the site,
19 neither one of them ever appeared on any certified payrolls for
20 the Ciena Project.

21 There's no legitimate question that the defendants
22 left a whole lot of their workers off the certified payrolls.
23 There were a few times when the defendants put some of the real
24 works on the payrolls. When did they do that? They did it
25 when government investigators had already interviewed those

Dblgnarl

Summation - Mr. Wible

1 workers at the job site and the investigators knew those
2 workers were working there. The defendants put some their real
3 employees on the certified payrolls when they knew they didn't
4 have any other choice.

5 Now, David Rosenthal told you, the man from HPD, told
6 you he went to the job site in late August of 2009, along with
7 another compliance officer and he told you they interviewed
8 several workers that day.

9 What did the defendants do? They listed the workers
10 that the defendants had interviewed on the certified payroll
11 for the last week of August: Joaquin Pablo, Manuel Pereda,
12 Milton Barahona, Pedro Pablo, and Pedro Orellana. These
13 workers were on certified payrolls for the first three weeks of
14 August and most of them never show up on a certified payroll
15 again. But the defendants put the workers on this payroll and
16 they did it for a simple reason: Because HPD had interviewed
17 these workers at the job site and knew they were working there.

18 You heard from one of these workers, Joaquin Pablo.
19 And he told you he worked at the job site from early August
20 through sometime in October of 2009, but this is the only
21 certified payroll his name appears on out of the roughly 33 of
22 them that are in evidence.

23 Did this certified payroll accurately reflect the
24 hours he worked that week? Not a chance. It shows that he
25 worked Monday through Thursday, seven hours a day, for a total

Dblgnarl

Summation - Mr. Wible

1 of 28 hours. But Pablo actually worked Monday through Saturday
2 58 hours in total like he told you, very different from what's
3 on the certified payroll.

4 What does Enviro & Demo sign-in log show that week the
5 one Jover Naranjo delivered to Lettire along with the certified
6 payroll? They showed Pablo worked four days that week seven
7 hours a day. But Pablo told you that none of the signatures on
8 those sign-in sheets were his. His signature was forged as
9 part of the fraudulent scheme.

10 Now, David Rosenthal wasn't the only government
11 investigator who went to the job site to interview the
12 defendants' employees. Luis Bermudez from the Department of
13 Labor went there on September 1, 2009, along with other
14 investigators. And one of the investigators interviewed
15 Richard Campoverde that day.

16 Now Campoverde hadn't appeared on any of the payrolls
17 for the Ciena Project up through August the 30, even though he
18 had been photographed there on several days. But because the
19 Department of Labor interviewed him on September 1, 2009, the
20 defendants put him on the certified payroll for that week.

21 Why did they do that? Because if they didn't, the
22 Department of Labor would know they had been given false
23 information but even though the defendants listed Campoverde on
24 the certified payroll, the information they put down for him
25 was false, just like for Joaquin Pablo they lied about his

Dblgnarl

Summation - Mr. Wible

1 lawyers and they forged his signature on the time sheets.

2 So even when the defendants listed their actual
3 workers on the certified payrolls, they still lied, they lied
4 about the hours they worked, they forged the employees'
5 signatures and of course, they lied about their employees'
6 wages and that brings us to the third category of lies on the
7 certified payrolls.

8 And this is really the most important category, that
9 the defendants paid their workers the prevailing wage. Again,
10 about \$49 an hour for workers who did demolition and about \$33
11 an hour for the workers who carted debris out to the street.
12 Remember the defendants were supposed to pay those full amounts
13 in lieu of providing benefits, but the defendants didn't pay
14 their workers those wages. How do you know that Enviro &
15 Demo's workers weren't paying the prevailing wage both you
16 heard from some of those workers each of whom told you how much
17 they got paid.

18 Now, it's true that each of them came in here and
19 admitted to having committed crimes, but were they reliable?
20 Were they straightforward when they answered questions. You
21 saw their demeanors on the witness stand. What's most
22 important here is that their testimony was consistent with each
23 other and with all the other evidence in the case.

24 Now, most of the workers told you they got \$13 an
25 hour, one of them told you he got \$15 an hour. None of them

Dblgnarl

Summation - Mr. Wible

1 told you they got the prevailing wage. Some of the workers got
2 paid in cash, but some got checks. And the checks you've seen
3 in this case that were given to the workers show you that they
4 weren't getting the prevailing wage. These checks are from the
5 defendant's own bank records.

6 For example, here's a photograph of Angel Lojano at
7 the job site on August 18, 2009. And just below that is the
8 paycheck he got for the last two weeks of August. It's
9 obviously, not for the prevailing wage. If you do the math,
10 you'll see \$1,807.50 is a check for a little over 60 hours a
11 week at \$15an hour. What's in the memo line? An address
12 somewhere in Brooklyn where Angel Lojano told you he wasn't
13 working. It's another lie to cover up the fraud.

14 Let's take a look at another example. Again this is
15 Antonio Torres in the white helmet just behind Luperio Naranjo.
16 And below that is the paycheck he got from Enviro & Demo for
17 the first two weeks of August, yet again, it's not for the
18 prevailing wage. It's a check for just under 50 hours a week
19 at \$13 an hour. And like on the other check we just looked at,
20 the memo line lists an address where Torres wasn't working at
21 the time.

22 These checks from the defendants own bank records show
23 you that the workers got the amount they told you, 13 or \$15 an
24 hour for the number of hours they told you they worked, roughly
25 50 to 60 hours a week. But these aren't the only checks in the

Dblgnarl

Summation - Mr. Wible

1 case.

2 In addition to these checks, the defendants gave
3 altered checks to Lettire and on those falsified checks, the
4 defendants tried to make it look like their workers got the
5 prevailing wage. For example, we discussed how Labor
6 Department investigators interviewed Richard Campoverde at the
7 job site on September 1. And the certified payroll for that
8 week shows that he was paid \$794 and 96 cents. The defendants
9 submitted this check to Lettire, along with a certified
10 payroll. The problem is, this isn't the real check they gave
11 Campoverde for that week because they didn't pay him the
12 prevailing wage. This check was doctored. It was falsified.

13 How do you know that? This control number, this
14 number that appears on the back of the check is called a
15 control number. And you heard a stipulation between the
16 parties that a control number is a unique number the bank
17 assigns to a single check when it's processed. And the unique
18 control number that appears on the back of this check really
19 belongs to a different check. It belongs to this check,
20 Government Exhibit 501, which the defendants stipulated is an
21 actual check, an actual canceled check on file with banco
22 popular.

23 You can see for yourselves, there's a redaction on the
24 back of one of these checks but the backs are identical. This
25 check, Government Exhibit 501, is the check Campoverde actually

Dblgnarl

Summation - Mr. Wible

1 got for his work from August 31 to September 6 as the memo line
2 shows you. How much was this check for? \$520, 40 hours of
3 work at \$13 an hour.

4 So what happened here? The defendants gave Campoverde
5 this check for \$520 and when they realized he had been
6 interviewed by Labor Department investigators on September 1,
7 they decided to give a fake check to Lettire to make it look
8 like they paid him the prevailing wage.

9 So what did they do? They took the back of the
10 processed check they had actually given him, the one for \$520,
11 cut it out and paste it beneath the face of the other check
12 that matched the certified payroll, and they gave that
13 falsified check to Lettire.

14 Now, the defendants did something very similar to make
15 it seem like they had paid Joaquin Pablo the prevailing wage.
16 Pablo told you he usually got paid in cash, but he got one
17 check, this check. It's dated September 1, 2009 and the memo
18 line says it's for the period from August 24 to August 30.
19 Remember, that's right after HPD interviewed him at the job
20 site.

21 Now, Pablo told you he got this check in December for
22 work he had done and if you look at the back of the check you
23 can see a stamp right there in the middle that shows he cashed
24 the check on December 20th, 2009. He cashed the check in
25 December because that's when Jover Naranjo gave it to him.

Dblgnarl

Summation - Mr. Wible

1 Pablo spoke to Jover Naranjo about why he got this one
2 check when he usually got paid in cash. And what did Jover
3 Naranjo say? He said Enviro & Demo needed paperwork to prove
4 Pablo was working at the site the last week of August.

5 But the defendants didn't want to give Lettire a copy
6 of this check. They knew it looked suspicious if they gave
7 Lettire a check dated September 1 that was cashed several
8 months later in December, so what did they do? They gave this
9 check to Lettire, Government Exhibit 204, the front of the
10 check matches the check they gave Pablo. It's the same check
11 number, the same date, the same amount, and it says the same
12 thing in the memo line, but the back you'll see is different.
13 The back of the check they gave to Lettire shows that the check
14 was processed on October 13, over two months before they gave
15 Pablo the check.

16 How did the defendants make it look like Pablo cashed
17 the check in October when they didn't even give it to him until
18 a couple of months later in December? It was another cut and
19 paste job. How do you know that? Because the unique control
20 number that appears on the back of the check they gave to
21 Lettire, Government Exhibit 204, wasn't assigned to the check
22 they gave Joaquin Pablo. It was assigned to this check,
23 Government Exhibit 514, which, again, the defendants stipulated
24 is an actual copy of a canceled check on file with Banco
25 Popular.

Dblgnarl

Summation - Mr. Wible

1 The typed information on the back of the two checks is
2 exactly the same. The defendants took the back of this check
3 that had been issued to this other worker, Darwin Celi, exhibit
4 514, pasted it under the front of the check they issued to
5 Pablo, and pasted Pablo's signature over Celi's and then they
6 submitted that doctored check to Lettire, along with a
7 certified payroll for the last week of August. They went to
8 all that trouble to make it look like they had paid Pablo the
9 prevailing wage when in reality they hadn't.

10 Now, these two checks to Richard Campoverde and
11 Joaquin Pablo weren't the only ones the defendants falsified.
12 You can compare for yourselves the altered checks the
13 defendants submitted to Lettire with the real checks from the
14 defendants bank records. For example, you can compare
15 Government Exhibit 204 at page 28 which is a doctored check
16 with exhibit 514 at page four. And you can compare Government
17 Exhibit 205 at page 14, another falsified check, with exhibit
18 514 at page five.

19 The defendants went to such great lengths to make
20 their lies seem true because they knew that the lies on the
21 certified payrolls mattered.

22 Luis Bermudez and David Rosenthal from the Labor
23 Department and DOL told you that when they find a false
24 certified payroll, they try to figure out how much a given
25 worker should have been paid and then they bill the company for

Dblgnarl

Summation - Mr. Wible

1 the difference. That's why the defendant's lies matter. So
2 how much money did the defendants steal?

3 Let's take one worker as an example to give you an
4 idea of the approximate amount. Angel Lojano told you he
5 typically worked 60 hours a week and that he got paid \$15 an
6 hour. That's about \$900 a week. So how much should he have
7 been paid for his demolition work in a typical week? For 40
8 hours at \$49 an hour and 20 hours of overtime at about \$73 an
9 hour, for a total of approximately \$3,400.

10 Now, Angel Lojano worked at the job site for about six
11 months or 26 weeks. His hours may have varied a little bit
12 from one week to the next but a good estimate is that over that
13 six-month period, the defendants underpaid him by about
14 \$65,000.

15 Now, Angel Lojano was just one of over 20 people who
16 worked at the job site for Enviro & Demo, at least ten of whom
17 aren't listed on any of the certified payrolls. But what does
18 this show? That the defendants kept hundreds of thousands of
19 dollars for themselves that they were required to pay their
20 workers.

21 Now, we have talked about the bogus documents that the
22 defendants created to make it seem like they were paying their
23 workers the prevailing wage, but that's not all the defendants
24 needed to conceal that they were paying workers far less than
25 they were required to pay.

Dblgnarl

Summation - Mr. Wible

1 You heard from multiple workers that Luperio Naranjo
2 told them to hide if government investigators showed up at the
3 site and Joaquin Pablo also told you that Luperio Naranjo
4 instructed him to lie if he got interviewed about the hours he
5 worked, about his wages, he even told Pablo to give a fake
6 name.

7 And what happened when Luperio Naranjo saw that Angel
8 Lojano spoke to a Labor Department investigator as Lojano was
9 leaving the job site one day around January 2010? Luperio
10 Naranjo fired him for talking. Lojano's brother, Rolando
11 Criollo, he got fired, too. And when Angel Lojano went to
12 Enviro & Demo's office to get his final paycheck, Jover Naranjo
13 told him he should speak to the investigator again and lie. He
14 told Lojano to change what he had told investigators and say he
15 had worked at the job site only one day cleaning out snow.

16 Luperio Rolando told Rolando Criollo that he should
17 leave New York state entirely because his brother had spoken to
18 the Labor Department.

19 What did Jover Naranjo do when he gave Joaquin Pablo
20 that back-dated check made up to look like it was for the week
21 Pablo had been interviewed at the job site? Jover Naranjo told
22 Pablo that he was given the check to make it look -- so that he
23 would have paperwork to make it look like everything was on the
24 up-and-up.

25 The defendants wanted their workers to lie to

Dblgnarl

Summation - Mr. Wible

1 investigators, but the defendants didn't stop there, they kept
2 it up, even after the Labor Department had figured out what was
3 going on and had brought a case against the defendants.

4 They had one of the secretaries give Clever Pauta this
5 false certification to sign. Pauta told you he got paid \$13 an
6 hour and that he had spoken to Labor Department investigators,
7 but the defendants didn't want him to testify in the DOL's
8 case. So they prepared this certification for him to sign
9 falsely asserting that he had not been underpaid. And when he
10 refused to sign it, they fired him.

11 The defendants also wanted to hide their workers from
12 investigators so the workers would never make any statements to
13 investigators or testify in court at all. Luis Bermudez, the
14 DOL investigator, asked Jover Naranjo for a complete list of
15 all the workers who had done work at the job site on 100th
16 Street, and this is the list Jover Naranjo gave him in early
17 December 2009. This list contains some of the very same types
18 of lies as the certified payrolls. Some of these people didn't
19 do any work on the job site and many of the people who actually
20 did the work don't appear on this list.

21 A few of the people on this list did work, and why are
22 those names on there? Because these are the same people who
23 had gotten interviewed on the job site. Jover Naranjo knew
24 government investigators already knew these workers were doing
25 work there.

Dblgnar1

Summation - Mr. Wible

1 Why did the defendants want their workers to lie? Why
2 did the defendants want their workers to hide? Why did they
3 want to hide their workers from investigators? Because if the
4 workers spoke to investigators and told the truth, the
5 defendants would have to pay lots of money, money they wanted
6 to keep for themselves.

7 Now, another way that the defendants perpetrated their
8 scheme was by using other people's identities. As we discussed
9 the defendants didn't want to put their real workers' names and
10 identification information on the certified payrolls, so what
11 did they do instead? They listed their family members and
12 friends. Whose names did they list? Franklin Chiriboga,
13 Gloria Feijo, Luperio Naranjo Jr., Marcia Gonzalez, and Maria
14 Paola Feijo. These were all real people and the defendants
15 knew it. But the defendants didn't just put these peoples'
16 names and other information on the payrolls.

17 The defendants also had some workers use these names
18 at the job site. They told Angel Lojano to use Franklin
19 Chiriboga's name and they gave him his ID card. They gave
20 Clever Pauta an ID card in Luperio Naranjo Jr.'s name and they
21 told Antonio Torres to sign in at the job site using Luperio
22 Naranjo Jr.'s name.

23 So how do you know that both Jover Naranjo and Luperio
24 Naranjo were in on these crimes? They played different but
25 complementary roles, so let's start with the fraud and false

Dblgnarl

Summation - Mr. Wible

1 statement charges.

2 How do you know that Jover Naranjo committed those
3 crimes? Because he admitted it to Elizabeth Gingrich, the
4 forensic accountant who testified. He told her that he left
5 about 35 percent of his workers off the certified payrolls. He
6 told her he paid some of his workers in cash, and he admitted
7 he paid wages of 13, 15 and \$22 an hour, a lot less than the
8 prevailing wage; in other words, he admitted to her exactly
9 what he had done.

10 How else do you know Jover Naranjo was responsible for
11 the fraud and the false statements on the certified payrolls?
12 Because Enviro & Demo was his company. You heard his prior
13 testimony that he did the payroll for the company, that he was
14 the only person authorized to sign checks on the company's bank
15 account. He knew who he was paying, he knew how much he was
16 paying them, and he knew exactly what work he was paying them
17 for.

18 Now, Jover Naranjo was also responsible for preparing
19 the certified payrolls. He signed them as he admitted in sworn
20 testimony he gave in a prior proceeding. He delivered those
21 certified payrolls to Lettire so they could be passed on to HPD
22 and the DOL. And when he signed those certified payrolls, he
23 knew he hadn't done any demolition work, he knew his father
24 hadn't done any demolition work, he knew his brother hadn't
25 done any demolition work, he knew his sister, his wife, and his

Dblgnarl

Summation - Mr. Wible

1 sister-in-law hadn't done any demolition work either. And, as
2 we just discussed, he knew there were lots of workers at the
3 job site whose names didn't appear on the certified payrolls at
4 all.

5 So what about Luperio Naranjo? How do you know he was
6 in on the fraud? Because what he did at the job site showed it
7 was very important to him to keep secret that Enviro & Demo
8 wasn't paying its workers the prevailing wage. You heard from
9 multiple workers that Luperio Naranjo made them hide and told
10 them to lie. Why did he do those things? Because he knew
11 Enviro & Demo wasn't paying the prevailing wage and he wanted
12 to keep government investigators from finding out.

13 Luperio Naranjo directed Joaquin Pablo to tell lies
14 that demonstrated his involvement in the fraud. He instructed
15 Pablo to lie and say he was getting \$34 an hour. Where did
16 that number come from? Did it come out of thin air? Of
17 course, not.

18 It's the prevailing wage for a Tier B laborer which is
19 exactly what Joaquin Pablo was. Luperio Naranjo also had
20 workers use names he knew appeared on the certified payrolls.
21 He told Angel Lojano to use the name Franklin Chiriboga he told
22 Rolando Criollo to use the name Fabian Avila and he directed
23 both Antonio Torres and Clever Pauta to use the name Luperio
24 Naranjo Jr. All of those names appear on the certified
25 payrolls. Luperio Naranjo wanted the workers to tell the very

Dblgnarl

Summation - Mr. Wible

1 same lies that the defendants put on the certified payrolls and
2 that shows you he was in on the fraud.

3 In addition, how did Jover Naranjo know which workers
4 to list on the certified payrolls for the weeks that the
5 investigators went to the job site and interviewed workers?
6 Jover Naranjo wasn't at the job site those days. Luperio
7 Naranjo told them who had been interviewed.

8 What else shows you Luperio Naranjo was in on the
9 fraud? Let's take another look at the ID card that Angel
10 Lojano had in Franklin Chiriboga's name. After Luperio Naranjo
11 found out that Lojano had got an ID card in his own name,
12 Luperio Naranjo made sure that the certified payrolls had
13 Lojano's name on them.

14 As of the last few days of December 2009, Lojano's
15 name replaced Chiriboga's on the certified payrolls because
16 Luperio Naranjo knew exactly how important it was for all of
17 the records to match up so they would seem legitimate in order
18 to make the scheme succeed.

19 How else do you know that Luperio Naranjo was part of
20 the fraud? He ordered his workers to throw down those fliers
21 from the union that show the prevailing wages and after Luis
22 Bermudez from the Department of Labor showed up at the job site
23 and interviewed workers in early September, Luperio Naranjo
24 knew exactly who he was hiding his workers from.

25 Now, let's talk for a moment about the witness

Dblgnarl

Summation - Mr. Wible

1 tampering charges. When Luperio Naranjo instructed his workers
2 to hide and to lie about their wages and hours, he wasn't
3 acting on his own. He was carrying out the defendants' common
4 plan to pay workers less than the prevailing wage and to keep
5 investigators from learning the truth.

6 Now, because Luperio Naranjo worked on the job site
7 every day, he had a lot more interactions with the workers than
8 Jover Naranjo did, but Jover Naranjo also told some of the
9 workers to lie. Remember after Angel Lojano had spoken to the
10 Department of Labor investigator Earl around January 2010 and
11 was fired by Luperio Naranjo, Jover Naranjo told Lojano to
12 speak to the investigator again and to lie.

13 And when Jover Naranjo knew he was in trouble with the
14 Labor Department, he had this false declaration made up for
15 Clever Pauta to try to keep Pauta from being a witness against
16 him. Jover Naranjo told Joaquin Pablo that that one paycheck
17 Pablo got was intended to make it seem like Enviro & Demo was
18 paying the prevailing wage when it wasn't, and Jover Naranjo
19 gave Luis Bermudez this incomplete list of employees so
20 Bermudez wouldn't be able to track down the real workers so you
21 know Jover Naranjo was involved in the witness tampering, not
22 only because that was an important part of the overall scheme,
23 but also because Jover Naranjo himself told his workers to lie
24 and tried to keep the DOL from tracking them down.

25 Now, let's turn to the identity theft. How do you

Dblgnarl

Summation - Mr. Wible

1 know Jover Naranjo was involved in that?

2 Because he knew he was putting names of real people
3 down on the certified payrolls, real people who didn't do any
4 work at the job site, his brother, his sister, his wife, his
5 sister-in-law, and Chiriboga.

6 What about Luperio Naranjo? Again, he had Angel
7 Lojano use this ID card in Franklin Chiriboga's name, he gave
8 Pauta the ID card in Luperio Jr.'s name and he had Antonio
9 Torres sign in at the job site using Luperio Jr.'s name because
10 he knew these workers' real names weren't on the certified
11 payroll, but that Chiriboga's and Luperio Jr.'s names were. He
12 had workers use real peoples' names to cover up the fraud so
13 that it would succeed.

14 Now, after closing arguments, Judge Rakoff is going to
15 instruct you in detail on the elements of each of the charges
16 in this case and whatever he says controls. But I want to
17 briefly mention a few things about the charges.

18 First, as to the fraud counts which are Counts One and
19 Two, I expect Judge Rakoff will tell you that in order for you
20 to find the defendants guilty of mail fraud and conspiracy to
21 commit mail fraud, the government has to prove that the
22 defendants took part in a fraudulent scheme. I've already
23 talked about the proof of the fraud and I won't go back to it
24 now.

25 Additionally, I expect Judge Rakoff will instruct you

Dblgnarl

Summation - Mr. Wible

1 that the government has to prove it was foreseeable to the
2 defendants that a mailing would happen in the course of the
3 scheme. You've heard about lots of mailings. Most
4 significantly you heard that Lettire used Federal Express to
5 send all these certified payrolls from Lettire's office in
6 Manhattan to HPD's Office in Manhattan. You heard that both
7 from Michelle Lettire and from -- who sent all the Fed Ex
8 packages and from David Rosenthal at HPD who received the Fed
9 Ex packages.

10 As to the witness tampering counts, Counts Three and
11 Four, I expect Judge Rakoff will instruct you that the
12 government needs to prove the defendants sought to prevent
13 their workers from giving testimony in connection with the
14 Department of Labor investigation or to influence their
15 worker's testimony.

16 Here, the defendants knew the Labor Department
17 investigators were interviewing their workers at the job site.
18 The defendants tried to prevent their workers from testifying
19 in connection with that investigation by hiding them and to
20 influence their testimony by telling them to lie.

21 What are two clever examples? When they fired Lojano
22 and his brother Criollo around January 2010, they told Lojano
23 to lie and they told Criollo to leave the state. In fact, the
24 defendants' efforts to influence their workers' testimony
25 continued even after the Labor Department had brought a case

Dblgnar1

Summation - Mr. Wible

1 against them with this false certification.

2 The defendants obviously knew about the Labor
3 Department case at this point because the false certification
4 even had the Labor Department's case number in it.

5 Now, I want to say a word about conspiracy because the
6 defendants are charged with conspiracy to commit mail fraud and
7 conspiracy to commit witness tampering. As to each of these
8 charges, I expect Judge Rakoff will instruct you that you must
9 find that two or more people agreed to commit mail fraud or
10 witness tampering and that it's the agreement that's the crime.
11 Who are the coconspirators here? Jover and Luperio Naranjo.

12 As for Count Five, the false statement charge against
13 Jover Naranjo, I expect Judge Rakoff will instruct you that the
14 government has to prove the defendant made false statements on
15 certified payrolls and that those false statements related to a
16 matter within the jurisdiction of the Department of Labor.

17 You know those payrolls included false information for
18 the all the reasons we have already discussed and they were
19 within the Department of Labor's jurisdiction because enforcing
20 the prevailing wage law's one of the Labor Department's
21 functions.

22 Now, the certified payrolls in this case were
23 submitted both to the Labor Department and to a city agency,
24 but I expect Judge Rakoff will instruct you that a false
25 statement doesn't even have to be made directly to a federal

Dblgnarl

Summation - Mr. Wible

1 agency. It's enough that the statement was made to a city
2 agency and that it related to the Labor Department's functions
3 and jurisdiction.

4 As to Count Six, the aggravated identity theft charge,
5 I expect Judge Rakoff will instruct you that the government
6 needs to prove that the defendants used the names of real
7 people to help commit the scheme. I expect Judge Rakoff will
8 also instruct you that the defendants had to know they were
9 using -- they had to know that the names belonged to real
10 people.

11 Here, it's obvious the defendants knew they were using
12 real peoples' names because they used their own family members
13 and friends' names. There's no question that the defendants
14 use of these identities helped them commit their crimes. By
15 listing the false names on the certified payrolls the
16 defendants could leave off the names of the real workers and by
17 having those workers -- having the workers use the names of
18 these other real people on the job site, the defendants tried
19 to ensure that their workers' real identities would remain
20 secret.

21 Now, I'm going to sit down in a moment, but before I
22 do, I want to say one last thing. Make no mistake, this is not
23 a hard case. It's not a close case. It's a simple case and
24 the proof here is overwhelming.

25 When you examine that proof, your common sense will

Dblgnar1

Summation - Mr. Wible

1 tell you exactly what happened here. Jover and Luperio Naranjo
2 saw an opportunity to make a lot of money by underpaying their
3 workers, workers they thought they could control and workers
4 they thought would never come to court and testify. They went
5 to great lengths to steal hundreds of thousands of dollars that
6 was supposed to go to those workers.

7 When you evaluate all the evidence in this case, all
8 this proof against the defendants, you will return the only
9 fair and just verdict, the only verdict that's consistent with
10 the evidence that the defendants are guilty as charged.

11 Thank you.

12 THE COURT: Thank you very much.

13 Now we'll hear from counsel for Mr. Jover.

14 MR. DONALDSON: If I may have a quick bathroom break.

15 THE COURT: Sure.

16 We'll give you ladies and gentlemen a five-minute
17 break.

18 (Continued on next page)

19
20
21
22
23
24
25

1 (In open court; jury present)

2 THE COURT: Please be seated. Now we will hear from
3 Mr. Donaldson.

4 MR. DONALDSON: Good morning. Good morning. I want
5 to thank you all for your attention the last two weeks. It was
6 clear that you all were very attentive, and we all appreciate
7 that. As the Court has indicated, my name is Xavier Donaldson.
8 I represent Jover Naranjo in this case.

9 What I want to start with is what the prosecution
10 ended with on their summation; that is, they said this is a
11 simple case. I believe they said something to the effect; that
12 it's straightforward. They showed you what happened. We are
13 of the opinion that this is a what-happened case. Normally,
14 you have a who-did-it case versus a what-happened case. This
15 is what we like to call a what-happened case. It is our belief
16 that the prosecution has not shown what happened. I want to
17 say a few things, and I want you to remember these things.

18 The fact that the prosecution has brought a charge in
19 the name of the United States of America entitles the
20 government to no greater consideration than that accorded any
21 other party. The government must prove each essential element
22 of that charge beyond a reasonable doubt. If it fails, your
23 verdict should be not guilty on that charge. The burden never
24 shifts.

25 Now, what's this case about? I said it in my opening,

DblQnar2

Summation - Mr. Donaldson

1 and I'll say it again. What is this case about? It's really
2 about a very large local union who were very upset because
3 there were no workers on this multimillion dollar work site.
4 Make no mistake about it. This was an \$87 million or more work
5 site. And according to the union, they were upset because
6 there were no workers, in our opinion, on that site.

7 What else is this case about? This case is about
8 incredible testimony by laborers motivated by money and
9 freedom. And the government pretty much crystallized that a
10 second ago when they put up Angel Lojano's potential estimated
11 -- what he claims estimated cash he would have gotten, this
12 \$65,000 that Lojano conservatively would have gotten. That's
13 what this case is about. This case is about laborers who were
14 told that they could get more money, and the government
15 crystallized that for you. The government, according to them,
16 said Lojano conservatively was owed \$\$65,000.

17 What else is this case about? And this is the part
18 that is a little shocking. There's a little coverup going on
19 here. Something else is going on here. There is something
20 else going on here. There is something under the current going
21 on here that we're going to talk about. I'm going to bring it
22 to your attention, but there is something going on that is a
23 little bit involved in money, but it's underneath the current.
24 It's kind of sleeping. It's dormant. But I want to wake it
25 up. I want to bring it to your attention.

1 How do we know that the union was mad because there
2 were no union workers on the site? Well, Mr. Rodriguez came in
3 and testified for you. He's a representative of the union. He
4 is the one that filed the complaint. He's the one that called
5 and said, listen, something's going on. Then he came in and
6 told you, well, you know, my real aim, one of my reasons for
7 doing this, it was a good reason, an admirable reason is what
8 he told you. It's what he wanted you all to believe because
9 that would make him seem more believable, more credible. I
10 wanted to help the workers. I wanted to help the little guy.
11 That's what he told you all. That was my main reason to aid
12 the workers. To aim to help the workers, I believe is what he
13 said.

14 Not one of these workers, not one of these workers,
15 said did they join that union; not one. In fact, one of them
16 told you that he wasn't going to join a union because what they
17 say sometimes is not true. Not one of these workers said that
18 that union helped them take any steps to become a United States
19 citizen; not one of them. But his goal was to help these
20 workers. Not one of those workers said that that union
21 representative, whose aim was to help these workers, took any
22 steps to do anything legally for these workers. Not one worker
23 said that about this union. Mr. Rodriguez said I came to aid
24 the workers. Not one worker said that. But we did find out a
25 few things, and I was asking questions for a reason. Sometimes

DblQnar2

Summation - Mr. Donaldson

1 it gets lost in translation, but I was asking questions for a
2 simple reason because I knew I had to come and talk to you all
3 again.

4 I Kept asking about that little report from October 23
5 because it was important. Then I asked Mr. Rodriguez, well,
6 you know, was there a meeting on October 23?

7 Yes.

8 Were you there?

9 Yes.

10 Did you help out fill out applications?

11 Yeah.

12 OK. Put a thumb tack there.

13 Workers: What were you doing October 23?

14 I don't remember now.

15 Did you fill out any applications?

16 I don't remember now.

17 Did you meet with somebody?

18 I don't remember now.

19 Well, it's time to start remembering now because we're
20 going to start getting to what this case is really
21 about -- cash.

22 If you can put up 3507-9, Mr. Phillips, please. Could
23 you blow that up? This is one of those documents that was
24 filled out by one of the workers on October 23, 2010. This is
25 ironically the same day that the officer or Mr. Rodriguez said

DblQnar2

Summation - Mr. Donaldson

1 he was talking to all these workers, October 23, 2010. That's
2 why I kept asking that question of the workers, because I knew
3 it was coming. This is one of the documents where they added
4 on to language in this document to get more money from the
5 Department of Labor; where they put in false information to get
6 more money from the Department of Labor.

7 Some of them started saying, well, I don't remember
8 signing this. I don't remember this.

9 Then we got Rodriguez on the stand. What does he tell
10 you?

11 Yes, I helped them fill out applications.

12 What day?

13 October 23.

14 What day is that?

15 October 23.

16 Not one of them, not one worker, not two workers or
17 three workers. So, yes, his aim was to help the workers out.
18 His aim was to help the workers out. This is one of the ways
19 he did help the workers out, by helping them fill out documents
20 containing false information to get more cash from New York
21 State Department of Labor.

22 Let me repeat that. Rodriguez was helping them fill
23 out documents fraudulently to get more cash from the Department
24 of Labor, I guess in addition to the \$65,000 that they wanted.

25 There is something going on here. It's about

DblQnar2

Summation - Mr. Donaldson

1 incredible witnesses. It's about incredible witness testimony.
2 It's about what is the bottom line, what would you do to get
3 money. Some people say money is the root of all evil, but for
4 some strange reason, people chase it. We teach our kids to
5 make money.

6 We got folk here, and this is not about -- I don't
7 want this to be confused with some -- I guess, some negative
8 onslaught against immigrants. It's not that. But we're not
9 going to avoid the reality of what's going on right now, and
10 that is very clear. These witnesses snuck into this country.
11 They came here illegally. One of them said he went through a
12 few mountains, went through a few countries, snuck under some
13 borders, walked about 500 miles, I imagine, dropped his visa in
14 Mexico. Fine. They have been here for several years
15 illegally. Fine. They have secured fake identifications
16 illegally. Not fine. They secured jobs sometimes illegally.
17 Not fine. They were on this case and told people about their
18 fake IDs, told the government about their fake green cards,
19 told people about their fake social security cards, and they're
20 still working illegally.

21 Some of them still have their fake social security
22 cards and their fake ID cards. Some of them are still getting
23 paid cash on construction sites right now. Some of them have
24 never paid taxes. Some of them claim to be paying taxes
25 without a social security number or ID number. I have no idea

DblQnar2

Summation - Mr. Donaldson

1 how that's possible. None of them have made even the slightest
2 attempt to become a United States citizen. All of them have
3 lied to federal officers.

4 Now, I imagine that that is all OK. We're just
5 supposed to forget all that and whatever they say we're
6 believing them because they're on the stand, they're testifying
7 and, the government gave them an agreement. And if they lied,
8 then something's going to happen. Well, they already lied.
9 You don't get excused now because the government gave you a
10 letter so you say, well, I'm not going to lie now.

11 Well, that's not the way it works. They already lied.
12 We know they are capable of lying. We know they are capable of
13 misstating the truth. We know they are capable of bending the
14 truth. So that's how you should listen to their testimony,
15 with the understanding that they are capable of lying. They
16 are capable of lying to federal officers. They are capable of
17 sneaking around undetected. They are capable of going to
18 Queens and Roosevelt Boulevard, which is incredible how all
19 three of them happened to go to the same Roosevelt Boulevard
20 and get the same ID. That's incredible. At different years,
21 mind you. That's the most amazing part.

22 One in 2004, Roosevelt Avenue in Queens, I just walk
23 down the street. Hey, buddy, I need some fake ID, fake social
24 security card. Got you.

25 Another one in 2006. Roosevelt Boulevard. Hey,

DblQnar2

Summation - Mr. Donaldson

1 buddy, fake ID, fake social security card. I got you.

2 I guess we're just supposed to believe that. Forget
3 the common sense. Forget that everybody in 2004, 2000, 2006, I
4 guess the same guy is sitting there for six years in a row with
5 a sign up saying "I have fake green cards and fake social
6 security cards. Come on down. We can go inside." That's just
7 how it works, I imagine, or that's what we're supposed to
8 believe. No. So when you are listening to their testimony,
9 I'm suggesting you listen to it with that in mind. They are
10 capable of lying. They have lied. I think it's crystal clear
11 on that stand that they have been a little less than truthful.

12 With that in mind, the government wants you to believe
13 that Jover Naranjo somehow participated in these people hiding.
14 I mean, these 15, 20 workers are on a site in daylight. Every
15 time an agent came up or Department of Labor person came up,
16 who no one knew who he looked like, they started running and
17 hiding. What is amazing to me -- and I could have missed
18 something, but this is amazing to me -- is how ironic it is
19 that they have all these pictures of all these workers, all
20 these pictures of different workers doing different things,
21 walking with hats on, people handing out things, but on all
22 those particular things when all the cameras are out nobody is
23 hiding. It's just mazing how that just happens to be available
24 that day when the workers are out and walking around, they got
25 cameras out and pictures taken, nobody is hiding those days.

DblQnar2

Summation - Mr. Donaldson

1 They're not in the building for seven hours a day. I guess
2 that's how it works.

3 So, according to them, we have tier A workers who do
4 the demolition inside, and tier B workers who are outside. I
5 guess, somehow the agents came along when the tier B workers
6 who were outside were all inside too, and that's how nobody saw
7 them because they were all hiding at the same time. That's
8 amazing.

9 What's even more amazing was that the Department of
10 Labor investigator was there a few occasions, and he couldn't
11 tell you he saw anybody hiding. He couldn't tell you about
12 anybody hiding. The union rep was there 30, 40 times. One
13 time or two times when the Department of Labor person was
14 there, no evidence anybody was hiding. An HPD person came
15 there; no evidence of hiding. He talked to somebody, according
16 to him. No visible violation by the same agent. He gets
17 there. He says, I walked around to do a visual inspection.

18 What did you see?

19 I don't know.

20 Who did you see?

21 I don't know.

22 Did you see any workers?

23 I don't recall.

24 What were you there for?

25 To do a visual inspection.

DblQnar2

Summation - Mr. Donaldson

1 Of what?

2 The site.

3 Did you see any workers?

4 I don't remember that.

5 All of a sudden he got amnesia. There is no credible
6 evidence of hiding. The only person that's saying somebody was
7 hiding are the workers. There's no credible evidence of
8 anybody hiding. In fact, it just doesn't make any sense. But
9 let's continue.

10 I mentioned that undercurrent. The reason why I
11 mentioned that is because as much as they gave you, as much as
12 it looked like everything started adding up, the jigsaw puzzle
13 started coming together, it started looking really good on TV,
14 something underneath doesn't make sense, and that is this: The
15 government put in evidence, I believe it's evidence 1204, it's
16 the TCAP agreement. You can look at it if you want to. It
17 says on the TCAP agreement -- this is between Hobbs Ciena and
18 HPD. It talks about prevailing wage. This is what the
19 government put in evidence. This is one of the first things
20 they put in evidence. It's a nice thick contract, and they
21 referred to it, it says paragraph 9(C), prevailing wage.

22 Listen to this. Look at it if you like. So when they
23 did that, I said to myself, well, that's interesting. Because
24 I know what paragraph 9(C) in this contract says and I know
25 what it doesn't say. So it says 9(C), look at it, it says

DblQnar2

Summation - Mr. Donaldson

1 prevailing wage. It talks about how -- we'll get to it. It
2 talks about how: Construction of the project shall be subject
3 to the requirements of the Davis Bacon Act, the contract work
4 hours and safety hours, which is CWHSSA and the regulations,"
5 etc. Sounds good. Bingo. Right? Well, I said, all right,
6 that was put in and it was dated, I believe, June 2009. Sounds
7 right. Right before my client began his contract August 2009.
8 Everything sounds good. Prevailing wage. Great.

9 Then we look at 1202, and we turn to the fourth page
10 of 1202. We go down to the bottom where it says "whereas"
11 section nine of the TCAP written agreement sets forth certain
12 federal requirements. Important word next "and, whereas, DACR
13 has requested that HPD has agreed to amend" -- amend, modify,
14 alter -- "amend the TCAP written agreement to modify section
15 9(C), the prevailing wage subsection and include the applicable
16 Davis Bacon" -- wait for it -- "the applicable Davis Bacon wage
17 schedule." That was dated -- wait for it -- March 2010.

18 Well, now that's strange. That's pretty strange. And
19 you say to me, Mr. Donaldson, what's that mean? So I said,
20 well, let's go to 9(C) of that amendment or modification.
21 9(C). Prevailing wage. Added to 9(C) is little word in the
22 next paragraph -- schedule one.

23 OK. Let's look at schedule one. You flip back to the
24 back where it says schedule, wage schedule. Flip the page,
25 what do we have? A wage schedule with wages on it. Now, I

DblQnar2

Summation - Mr. Donaldson

1 asked myself this question: What does this look like to me?
2 This looks shockingly like, very similar to, what's in 101 on
3 page 42. I said to myself ding, ding, ding, why is it that
4 this modification that happened in March 2010 that adds the
5 wage schedule to the contract looks shockingly like -- take out
6 shocking -- looks exactly like that document that's in 101?
7 It's a good question. It's a good question. Because I don't
8 know. Somebody wants you to believe that that wage schedule in
9 101 was either in the contract in August 2009 or maybe a week
10 after August 2009. I don't know. But according to these two
11 contracts, that very similar-looking wage schedule appeared
12 March 2010. Let's keep going because it just gets more
13 interesting.

14 On December 2009, Mr. Bermudez or deputy director
15 Bermudez said he interviewed my client. OK. He mentioned
16 this, well, we talked and we talked about all these things, and
17 he said how many workers he had. He said what he paid them.
18 He said all this stuff, and he also mentioned to me about the
19 prevailing wage. So I said, Agent Bermudez, that's important
20 to you correct?

21 Yes.

22 Because you went out there to talk to him about that,
23 right?

24 Yes.

25 And that's what you were talking about, prevailing

DblQnar2

Summation - Mr. Donaldson

1 wage?

2 Yes.

3 And you write down your highlights, right?

4 Yes.

5 Here's your highlights.

6 I didn't put that down in my highlights.

7 OK, fine. We'll skip that. Then he told you he
8 talked to my client again in April 2010. What did he talk
9 about?

10 He talked about this, and he talked about that, and he
11 talked about wage rates in April of 2010.

12 So then I asked him, I said, well, did he talk about
13 wage rates in December of 2009 with you?

14 No.

15 But he talked about wage rates with you in April of
16 2010?

17 Yes.

18 OK, let's go back to this again. Now it's starting to
19 make sense to me. So then the wage rates happened to appear in
20 this document in March 2010. My client was interviewed by
21 Bermudez in April 2010, and according to Bermudez, he mentions
22 wage rates. OK. Well, he didn't mention it to you in 12/2009.
23 This contract was modified in March 2010. You interviewed him
24 again in April 2010. And what does he mention to you in
25 April 2010? He doesn't talk to you about December 2009, wage

DblQnar2

Summation - Mr. Donaldson

1 rates. OK. OK. Now I think we're -- OK. Seems to make a
2 little sense.

3 Then Ms. Lettire gets on the stand. Did he talk to
4 Ms. Lettire? What did he ask her? About wage rates. What did
5 she say? In court she admitted and she said told you, I did
6 not review the contract. I was not aware of his contract. I
7 don't know what was in his August 2009 contract.

8 But, Ms. Lettire, in September of 2013, you met with
9 the U.S. Attorney's office, right?

10 Yes.

11 And in that meeting, you told the U.S. attorney what?

12 That the wage rates were attached to the contract.

13 So, Ms. Lettire, do you know that?

14 No, I don't.

15 Did you see them?

16 No, I didn't. Why did you tell them that?

17 I don't know.

18 Let me get this right now. So, now something's wrong
19 now. There's something going on here. Somebody or something
20 is going on involving these wage rates, the prevailing wage
21 rates. Now I'm sure someone will get up after me and go it
22 doesn't make a difference. It clearly does because they're
23 bringing it up a lot. And it's not making any sense at all, at
24 all. But why do you suppose she would make that up? Why do
25 you suppose she would say to a federal prosecutor that I saw

DblQnar2

Summation - Mr. Donaldson

1 the wage rates in that document. They were attached to that
2 document, and then come in here and tell you all, no, that's
3 not, in fact, true. I didn't see that. I told them something
4 that probably wasn't exactly true. I don't want to say I lied
5 because I don't want to use the L-word on the stand, but it
6 wasn't exactly true. I won't call it a lie. My four-year-old
7 calls that a fib. It wasn't exactly true. Well, let's move
8 on.

9 Ms. Gingrich testified, and she was a very nice lady.
10 She came up here and testified very nice and everyone was like,
11 woa, she's different from all the laborers. And she just came
12 in and testified as to what happened. It just sounded so
13 eloquent. Something's wrong here. The devil is in the
14 details. Well, let's talk about it. There's this lawyer named
15 Mr. Bahn. Why is that important? Well, who cares about
16 Mr. Bahn? He's not a lawyer in this courtroom. Well, he is
17 now. There's a lawyer named Mr. Bahn. OK, work with me. Step
18 one, lawyer named Mr. Bahn.

19 Step two, Mr. Bahn represents Lettire Construction.
20 Step two.

21 Step three, Ms. Gingrich worked for Mr. Bahn before
22 she worked for the accounting firm. Important. Ms. Gingrich
23 worked for Mr. Bahn before she worked for the accounting firm.

24 Step four, Lettire was being investigated by the DOL,
25 Department of Labor, related to Davis Bacon Act, prevailing

DblQnar2

Summation - Mr. Donaldson

1 wage and their subcontractors.

2 Step five, Gingrich now works for an accounting firm.

3 You with me?

4 Step six, Lettire, the big construction firm who's
5 being investigated hires Gingrich's law firm to do neutral
6 review of back wages related to Lettire. So work with me here
7 again. Mrs. Gingrich now who is paid by Lettire conducts a
8 meeting with her boss, with Bahn, her former boss, and Jover
9 Naranjo for the purpose of deciding Lettire's involvement in
10 this DOL investigation. And in that meeting, Jover makes these
11 incriminating statements and a very nice exonerating statement
12 of Lettire. That is shocking, isn't it? I mean, that's just
13 shocking. Ms. Gingrich, that's shocking. Your former boss,
14 the attorney, you leave and go to a separate place. Your
15 former boss, the attorney, his client now needs help. So he
16 then recommends you, his former employee to, do this neutral
17 investigation of his firm and then during the meeting, the only
18 people that are present are Ms. Gingrich, the supposed neutral
19 person; her boss, Mr. Bahn; the attorney for Lettire and also
20 her former boss; and Jover. And then out of that meeting comes
21 an incriminating statement for Jover and a statement that
22 exonerates Lettire. That is just shocking. Who could imagine
23 that would happen? There's an undercurrent going on here.

24 The government wants you to believe that Mr. Jover
25 Naranjo somehow profited from this hundred thousand dollars

DblQnar2

Summation - Mr. Donaldson

1 contract; that he lined his pockets, I believe they said, with
2 hundreds of thousands of dollars, believe is what they said.
3 This \$785,000 contract somehow that he was paid 833, according
4 to the government, he lined his pockets and got rich off this.
5 I believe the government is forgetting about Government Exhibit
6 101 where it talks about what the money is for. They have to
7 forget about that. It talks about what the money is for labor,
8 equipment, approval fees, wage transportation. We talked about
9 that. That's all in the contract. But what's also important
10 is -- if you could put up 103, please -- this is where it
11 gets -- you have to start like the government and show pieces
12 the together so it starts making information to you.

13 According to Ms. Gingrich, there was an investigation
14 of Lettire back in December of 2009. She met with my client in
15 November of 2009 regarding the investigation and the
16 subcontractors. According to this document here, there was
17 payment to Jover and Enviro after November and December 2009.
18 That's what this says.

19 So, the government would have you believe then that
20 they are improperly lining their pockets with the money that
21 was received here, 12/23/2009, February 13, 2010, March 4, 2010
22 and March 26, 2010 and again March 26, 2010 you would have to
23 believe that all of that money received is improperly received
24 money, but that would have to be counted weird because Lettire
25 now, according to the government, knows that they're under

DblQnar2

Summation - Mr. Donaldson

1 investigation. They know that DOL is investigating them for
2 supposedly prevailing wage issues and Davis Bacon issues with
3 their subs.

4 So, you would have to believe then that Lettire is
5 still paying all this money to Enviro knowing that they're
6 doing something wrong. That's what you'd have to believe
7 because otherwise that would make no sense. Why would Lettire
8 keep paying Enviro if they know that Enviro was doing something
9 wrong? I mean, this is a for profit company. They are not
10 just going to give away -- what's that amount -- a hundred
11 something thousand dollars. I mean, they're just not going to
12 do that. What company does it? They're trying to protect
13 themselves so why do they continue to pay Enviro money if they
14 are trying to protect themselves? It doesn't make any sense.

15 But something else doesn't make any sense about lining
16 your pockets with money. According to the government and their
17 \$65,000 estimation of Lojano, if you multiplied it by ten
18 employees, you're at 650. If you say 15 employees, you're at
19 900 something thousand. The contract was for 785. So where
20 exactly -- how much money could he possibly be making? That
21 makes absolutely no sense. It goes against capitalistic
22 principles. It just makes no sense; zero sense. There's no
23 lining of pockets. There's no profit making. There no
24 receiving monies and fraud going on unless, of course, we're
25 saying Lettire was in on it. But now that would be one of

DblQnar2

Summation - Mr. Donaldson

1 those undercurrents that we're talking about it.

2 We don't want to say Lettire was in on it because that
3 would be bad. We don't want to say a big company of
4 \$87 million had something to do with this because that would be
5 bad. We don't want to say that they're responsible for any of
6 it because they put up buildings everywhere. They're a
7 multimillion dollar company. And this is Mr. Naranjo in the
8 real world. We don't want to say that.

9 Could you put 102 on the screen, please?

10 I keep saying there's an undercurrent going on. It's
11 dormant, but I need to wake it up. I need to wake that
12 undercurrent up because something is up. I want to turn it
13 into a tidal wave. I don't understand 102. It was read to
14 you. Feel free to read it again. This was what, again, had
15 the rates on it.

16 Ms. Lettire got up here and said on September 2013,
17 she said, yes, I told them that the rates were attached to the
18 contract. I guess in September 2013 she remembered that. But
19 she comes in here yesterday, or whatever it was, and all of a
20 sudden things change. Everything changed with Ms. Lettire.
21 Things just changed because something's going on here. You
22 know, what's particularly interesting about this \$87 million
23 contract and this multimillion dollar company is that the
24 document that they're alleging is so important is signed by,
25 according to Ms. Lettire, Mr. Naranjo on the bottom.

DblQnar2

Summation - Mr. Donaldson

1 Now, we're all adults. So I had to ask the question.
2 Where's the fully executed contract?

3 I don't know.

4 When did you get this?

5 I don't know.

6 Well, if you got it August 3, 2009 when the contract
7 was signed, that would have been an easy answer, I got it
8 August 3, 2009; it was attached to the contract.

9 That didn't happen?

10 Mmm-mmm. I don't know.

11 Why isn't your brother's signature on it?

12 I don't know.

13 Don't you have the authority to sign for your brother?

14 Yes, I do.

15 You've been doing that for 15 years?

16 Yes, I have.

17 Why didn't you sign this?

18 I don't know.

19 Why isn't it dated?

20 I don't know.

21 Where was it? I put it in my drawer.

22 When?

23 He came in. He signed it. I put it in my drawer.

24 Stop for a second. Does that make any sense to
25 anybody? Does that make any sense to anybody? No, it does

DblQnar2

Summation - Mr. Donaldson

1 not. She did not just come into this courtroom working for
2 this company for more than 20 years, a payroll executive for a
3 multimillion dollar company, pull out this prevailing wage
4 document in a prevailing wage case when they're being
5 investigated for prevailing wages and say "I don't know when it
6 happened." But what's more important is the actual language of
7 it, how it reads.

8 "Lettire Construction has attached the prevailing wage
9 scale for this specific project." Has attached? When did that
10 happen? "The subcontractor by signing this form agrees that
11 they have read and reviewed the prevailing scale." This sounds
12 like somebody is trying to cover themselves. Be honest with
13 yourself. This sounds like someone got a form together, knew
14 that they were being investigated, knew that they messed up,
15 and they've got to cover themselves, so they put this together.

16 So I asked her, this is not a Department of Labor
17 form, is it?

18 No, it's not.

19 This is not an HPD form, is it?

20 No, it's not.

21 Who created this form?

22 She did.

23 Somebody is covering something up now. Listen, I
24 don't like saying it, but it is what it is. You don't have a
25 form supposedly this important that goes to the heart of the

DblQnar2

Summation - Mr. Donaldson

1 case of what they're doing of their \$87 million contract, every
2 other document they have is signed, fully executed and dated,
3 and this one comes out not signed, not dated, and nobody knows
4 when he got it, how he got it, where he got it or anything like
5 that.

6 Sounded simple initially. I know it did. The case
7 sounded simple and everybody was ready to go home. Hold up a
8 second.

9 Let's talk about the mailing. Once again, let's talk
10 about it. I mean, I like putting everything out there. There
11 is no reliable credible evidence that that man over there,
12 Jover Naranjo, did mail fraud. I'll say it. I'm just going to
13 say it. You know how you know it? They almost conceded it
14 today. The devil is in the details because when Ms. Lettire
15 got up there the other day, she said it real quickly. He
16 brought the certified -- no -- strike that.

17 The question was, Ms. Lettire, how did you get those
18 payroll records and sign-in sheets?

19 Answer: Mr. Jover Naranjo walked them in and mailed
20 them in.

21 Bingo. Mail fraud. Got him.

22 Cross-examination is coming. Ms. Lettire, let's talk
23 about that mailing in.

24 I don't know.

25 Did he mail it?

DblQnar2

Summation - Mr. Donaldson

1 I don't know.

2 Are you sure that he mailed it?

3 No, you know what, I'm not sure. I don't know. I
4 don't know. That's gone.

5 So, then on summation, which is not evidence, but you
6 can still listen, Mr. Wible didn't use the word he mailed it to
7 them any more. His word was deliver. His word was Mr. Jover
8 Naranjo delivered the items to Ms. Lettire. You know why?
9 Because he's given up on Ms. Lettire and her mailing testimony.
10 He gave up on that. Done deal.

11 Then he said focus on the Federal Express because
12 Lettire delivered it to Department of Labor. Forget about the
13 part where he said about the mailing she messed that up. She
14 made that up. Forget that part. Focus on the Federal Express
15 now. Well, maybe.

16 Fact one: Lettire paid Enviro. Lettire paid Enviro.

17 Fact two: Enviro is not in the contract for HPD.

18 Next page.

19 Aggravated identity theft. Could you put up
20 Government Exhibit 601? We embrace the evidence. Angel Lojano
21 know and Franklin Chiriboga. Why did I put this up? Same guy,
22 different names. The devil is in the details.

23 Mr. Lojano, the guy who possessed the fake ID's, the
24 guy who went to Queens to get a fake ID, the guy who knows how
25 to get fake IDs, testified about these pictures. He said that

DblQnar2

Summation - Mr. Donaldson

1 he was using the fake ID initially as Mr. Chiriboga. And then
2 he decided, you know what, I don't want to use fake ID any
3 more. I want to be my real self. For some strange reason, he
4 has an epiphany. You know what? I want to go from being an
5 illegal person to being a legal person all of a sudden. I just
6 feel my moral compass has changed. I just want to be myself.

7 OK. Well, let's say for some reason he's walking down
8 the street coming to work one morning, he said to himself, you
9 know what? I don't want to be the guy I was before. I want to
10 be myself because that's the right thing to do, just like it's
11 the right thing to do to go and try to become a U.S. citizen,
12 just like it's the right thing to do not to use fake IDs. He
13 just decided that day it's the right thing to do to get my own
14 ID. Well, that was the problem. The devil is in the details.

15 He told you all "I changed it to my name." Now, ding,
16 ding, ding, ding, ding. Unless he's telling you all that he
17 has Gladiator stuff at his house and he can just change the ID
18 to his name and put his own face on his own name, that's a
19 problem, because that means he changed it himself. He decided
20 to make his own ID. That's what he said. He decided to make
21 his own Angel Lojano Gladiator ID. You know why he decided to
22 do that? Because he knows how to do it. That's how he did the
23 first one. Because he knows how to do it. No one told him to
24 do that. No one gave him that ID. He knows how to do it
25 himself. He did it because he wants to work. He's an illegal

DblQnar2

Summation - Mr. Donaldson

1 immigrant. He needed fake ID. He went and made one, and
2 that's what he did. We know he knows how to do that because he
3 told you, "I did it myself. I went and got my own ID. I
4 changed my own name." He didn't say anybody gave him new ID.
5 He didn't say Luperio or Jover gave him a new ID with his own
6 name on it. No. He said he went and did it himself.

7 So, unless he has his own Gladiator equipment-making
8 machine in his house, he clearly does because the evidence is
9 right there. The devil is in the details. Nobody gave him a
10 Franklin Chiriboga ID, just like no one gave him the fake ID's
11 he got in Queens, just like no one gave him the fake social
12 security numbers, just like nobody told him how to get jobs as
13 an illegal immigrant. This is what he knows how to do. This
14 is what he did. And he told on himself when he said, "I went
15 and did it myself."

16 About these signatures, feel free to take them back
17 and compare them, these forgeries. Take them back and compare
18 them. Look at them yourself. You're going to say to yourself,
19 well, they're forgeries because the workers told us they're
20 forgeries. Well, the workers want cash. The workers we know
21 are liars. The workers we know need -- I don't know if they
22 need money. They say they want more money. Feel free to
23 compare the signatures yourself.

24 Tampering with a witness. There is no credible
25 evidence that Jover corruptly persuaded anyone to hide from any

DblQnar2

Summation - Mr. Donaldson

1 one or misrepresent their work schedule or pay in order to
2 influence, delay or prevent their testimony in any official
3 proceeding. No credible evidence of that at all. Zero.

4 Mr. Wible brought it up in summation. He says that
5 one of the ways you can tell he tampered with a witness was
6 that Jover told Mr. Lojano to change what he told
7 investigators. Tell them he was cleaning out snow, and that is
8 correct. Mr. Lojano said Mr. Jover Naranjo said that. That is
9 what Lojano said on direct. That is exactly what he said on
10 direct.

11 But the problem is, like a lot of these witnesses,
12 when I asked the exact same question on cross, the exact same
13 question on cross, not even 15, 20 minutes later, his response
14 was "Jover told me there was nothing to be done." That's it.
15 Feel free to go back and look at it. It's amazing to read.
16 When they asked him the question, it fit the elements of the
17 crime. When I asked him the question, the answer was, you
18 know, he just told me -- he asked me what happened. I told
19 him. He said, well, there's nothing that can be done, sorry.
20 Two entirely different answers from direct to cross. Their
21 answer fits the elements of the crime. Our answer don't fit
22 the elements of the crime. The Judge is going to instruct you
23 to pay attention to how the witnesses testified during direct
24 and cross, whether their answers stay the same, whether they're
25 consistent. I mean, it's shocking, but let's continue.

1 Clever Pauta, they put up the statement on the screen.
2 In one of them they claim there was some tampering with the
3 witness. Mr. Pauta's document. He said he was given this
4 document and he wouldn't sign it. He went and spoke to a
5 friend. They translated it for him. He didn't sign it.

6 When he refused to do that, he said he was fired. Why
7 do we know this didn't happen like this? Go to the transcript.
8 because he says this happened in October 2011. October 2011.
9 He said it two or three times, it happened October 2011.

10 According to the government, Mr. Pauta said, "After I
11 wouldn't sign it, they fired me." October 2011? Really. Then
12 he goes on, the government goes on and says that -- he said
13 Jover gave it to him. Please review the transcript as much as
14 you like. There is nothing in there that says Jover gave this
15 man this document. There is nothing in there that says Jover
16 spoke to him about this document. There is nothing in there
17 that Jover fired him about this document. There is nothing in
18 there that says Jover had anything to do with this document.
19 There is nothing in there that says Jover was even aware of
20 this document. Nothing.

21 But what's amazing is he said he got fired after he
22 got the document and refused to sign it in October of 2011.
23 It's hard to remember falsehoods. Truths you could remember
24 all the time because it is what it is; but when you make up
25 stuff, you can't remember what you made up three, four years

DblQnar2

Summation - Mr. Donaldson

1 ago. It's hard.

2 The last few things I want to say to you all is that
3 this idea, this concept about false statements and the
4 government's position on it, it's rather incredible,
5 remarkable, actually. It's an exercise in intellectual
6 gymnastics, I think. We heard the evidence. We heard what the
7 government said. One of the things that they're arguing, and
8 argued rather diligently, I might add, is that they know my
9 client did it -- they even put it up there -- because he told
10 you he did it. His own words say he did it. So they want you
11 to believe those words.

12 But, on the other hand, he is guilty of false
13 statements because he lied to people, because he lied about
14 this, because he lied about this. So, on the one hand, they
15 want you to believe him when he tells you he's guilty. On the
16 other hand, they want you to disregard something he said
17 because he's a liar. It is a matter of intellectual gymnastics
18 I'd say. It makes both sides of your brain work. They want
19 you to believe him when it's convenient for them, but don't
20 believe him at the same time. It's interesting.

21 It is our position that the evidence is not clear. It
22 is our position that there is no, no way that you know what
23 happened. It is absolutely abundantly clear to us that the
24 evidence shows that there is an undercurrent of something else
25 going on with this case that is causing a reasonable doubt.

DblQnar2

Summation - Mr. Donaldson

1 There is a lot going on here that's causing reasonable doubt.

2 You have incredible witnesses testifying to you. You
3 have inconsistent statements coming to you. You have evidence
4 that can be interpreted six or seven different ways. If you
5 have that, and you do, when you have that, and you do, because
6 you have that, you have a reasonable doubt. Because you have
7 that doubt, you must say not guilty. Thank you.

8 THE COURT: All right. Mr. Burke.

9 MR. BURKE: Not guilty. Luperio Naranjo is not
10 guilty. He was not guilty when this trial started, and he's 's
11 not guilty today. They have a burden of proof. They have to
12 prove each and every element of the crimes charged beyond a
13 reasonable doubt. They never did it. They never got close.

14 They're right; it's not a close case. In some ways,
15 it's ridiculous as far as Luperio Naranjo. They've got the
16 burden of proof, and they couldn't meet it. They couldn't meet
17 it because he didn't do the crimes.

18 He didn't commit mail fraud. He didn't tamper with
19 witnesses. He wasn't in a mail fraud conspiracy. He didn't do
20 any of the crimes charged in the indictment.

21 May it please the Court, the government, the two Mr.
22 Naranjos, co-counsel, ladies and gentlemen. Look, the contract
23 was for \$147 million. Lettire's end is 87 million. Enviro,
24 the demolition company, ends up with 800 something because they
25 did more work than they anticipated. Enviro did the job,

DblQnar2

Summation - Mr. Donaldson

1 right? I mean, usually when you're prosecuting a company it's
2 because they didn't do the job. They did the job. Enviro paid
3 the workers what they said they were going to pay them. Right?
4 So they did the job. They paid the workers what they said they
5 were going to pay. Not one worker got up there and said, look,
6 they told me they're going to pay me 15 bucks and they didn't
7 pay me 15 bucks or they told me they're going to pay me \$13,
8 and they didn't pay me \$13. That is not what happened. They
9 all said they got paid what they said they're going to get
10 paid, and we're here because the government feels they should
11 have been paid more.

12 And Luperio Naranjo, the man who drives the van to the
13 job, is the one who ends up getting prosecuted. Luperio
14 Naranjo is the father of Jover. He's not the owner of the
15 company. He speaks Spanish. He's 66. He doesn't own the
16 company. He doesn't negotiate the contracts. He doesn't sign
17 the contracts. He doesn't make out the payroll. He doesn't
18 make out the checks. And payroll shmay-roll, he's got nothing
19 to do with that. And you listen to the government when they
20 summed up, for the first 30 minutes of the summation I counted
21 them, they used the word "they" 186 times. No, I didn't count
22 them. I'm lying. But they used the word they constantly.
23 They did this. They did that. Let me see. They signed the
24 payroll. They made out the checks. They planned this. They
25 wrote this down. They wrote that down. They is not him. They

DblQnar2

Summation - Mr. Donaldson

1 is not him. And, again, 116 times. The defendants did this.
2 The defendants did that. They is not Luperio Naranjo.

3 Look, if they indict Exxon and the chairman for some
4 kind of fraud with the workers, they don't arrest and indict
5 the head of the day shift at a gas station. And that's what's
6 happening here. How do we get here in the first place?

7 The union starts this. The union makes a complaint.
8 Non-union workers in Manhattan. Calling all cars. Come on
9 down. We got to do something. And sooner or later, every
10 bureaucrat in the city ends up down there. HPD. EPA. The
11 Department of Labor. They had more investigators than the
12 Warren commission doing this.

13 In part, it's based upon a company that they're saying
14 didn't pay overtime. And he's the one, Mr. Luperio Naranjo,
15 he's the one they bring to this table today, the person they're
16 accusing of crimes. And he's the one who's there all the time.
17 Masks, gloves. He's a foreman. Edgar Avila was also a
18 foreman. All these agencies, all these investigators, I don't
19 know how many times you heard from the witness stand here where
20 they say, well, did you see him absolutely doing the demolition
21 work? Was he digging some holes there or pushing a wheelbarrow
22 around? And he answers, no, he's supervising. Right? He's
23 working. I mean, old guys are allowed to work too. He's
24 supervising. But it's a big deal throughout the whole trial.
25 Right? Every witness. Did you see him working? How hard was

DblQnar2

Summation - Mr. Donaldson

1 he working? He wasn't even sweating, right? He was just there
2 supervising, or checking the guys out.

3 So what do you find out on the last day of trial?
4 This is on 457 at the top. It sounds like it's a big deal the
5 first week or so we're here; that he is not digging a hole in
6 the ground or throwing enough garbage away. This is
7 Mr. Rosenthal, the fellow who was just here yesterday, the last
8 witness. The government is talking to him.

9 "Q. How would a supervisor who didn't actually do any labor on
10 a job site be classified according to the prevailing wage rate?

11 "A. OK. Well, a supervisor is not really applicable to be
12 paid prevailing wages; only if they work at least 20 percent,
13 you know, of the time worked. So, let's say if the supervisor
14 worked 20 percent, you know maybe three days at maybe 20 hours
15 of -- no, say, ten hours of 40 hours, they would have to be
16 paid prevailing wages."

17 Next question:

18 "Q. What if they didn't do any labor, would they be required
19 to receive the prevailing wage?

20 "A. No, they're not required."

21 Last sentence:

22 "It's really to the discretion of the company, of course."

23 It's really to the discretion of the company. They
24 can pay him anything they want. He is not the company. They
25 can pay him anything they want.

1 They don't have to see him digging holes or emptying
2 garbage, and he's there all the time working. I guess, I don't
3 know, he's not working hard enough for them, right? That's
4 what it sounded like the whole trial. No, he's not really
5 pulling his weight out there. He's not the company. If the
6 company wants to pay him a million dollars they can, but they
7 didn't. He's not the one who made out payroll.

8 Now, it's an 81-page contract. It's in English. It's
9 not in Spanish. There's a small portion of this about the
10 prevailing wage stuff and they want to blame it on him. I
11 mean, obviously, the government's theory is this: Look, he
12 didn't sign it and you know he wasn't there when it was
13 negotiated. That's true. And he didn't really meet with the
14 Department of Labor or the forensic accountant or anybody. So
15 what's their theory? Ahh, he's the father, he must know what's
16 going on. Ladies and gentlemen, that's not proof beyond a
17 reasonable doubt. That's nothing. That's what they want you
18 to do. That's lumping people together.

19 (Continued on next page)

1 MR. BURKE: The workers. We'll talk about it
2 generally. We'll touch on it specifically. Now, general, we
3 should let's give some up. It's sympathetic in many ways,
4 right, the hard-working guys, it's a tough job. They're in a
5 vulnerable position here with the government. If they don't
6 cooperate with them, if they don't play ball with them, they're
7 accused of crimes, they can be put in jail, they can be on the
8 next plane back to South America.

9 Also, let's be honest, this is a big courthouse. It's
10 not an old courthouse, but there's a lot of serious crimes that
11 happen here and believe it or not, there's a lot more serious
12 crimes in this courthouse. You talk about them sneaking into
13 the country. It's not that big a deal in the whole lexicon of
14 criminal activity. They shouldn't do it, it's bad, but it's
15 not the end of the world. They didn't kill anybody. Let's
16 give them that.

17 But, let's just say this: They're not credible,
18 they're not reliable, by their very nature, by their very
19 nature. And certainly beyond proof beyond a reasonable doubt
20 they had fake names, they have fake IDs, they have fake green
21 cards, they have fake Social Security cards. They're little
22 fraudsters and they lie sometimes, and maybe they tell the
23 truth sometimes, but you really can't divide it. You really
24 can't tell one from the other.

25 Now, look, you folks in the jury, you're grownups,

Dblgnar3

Summation - Mr. Burke

1 you're mature. The people who were on that witness stand,
2 these workers they sat down and sometimes they lied to us and
3 you heard it. Now, can you prove it? You heard it. And I
4 call this my-dog-ate-my-fake-green-card defense, right?

5 They're on the witness stand. You say, look, where is
6 that green card? Where is that green card now? And they go
7 oh, yeah, yeah, green card, hey, I lost that thing. I lost
8 that green card. Where is the Social Security card? Oh, yeah,
9 it's coming back to me. I lost that, too. I lost the Social
10 Security card, too.

11 Did you look for it? No, I didn't look for it that
12 hard, or hey, where is that visa, where is that fake visa you
13 used when you got here? Oh, yeah, visa, I threw it away in
14 Mexico. I think that's where it must be. I'm sorry. Complete
15 nonsense, complete nonsense.

16 They shouldn't be crucified, right, but you're mature
17 people. You heard people tell stories to you. It's just not
18 true. It is just not true. And once they start lying to you,
19 you see once they're willing to sit there and lie about some
20 things, you got to be very careful about believing them about
21 the other things because other things they have been rehearsed
22 on, they have been rehearsed on it ten times, 20 times, 30
23 times and the Court will tell you this and maybe the Court did
24 already, I'm not sure, they're allowed to prepare the
25 witnesses, totally proper, right?

Dblgnar3

Summation - Mr. Burke

1 You can go talk to your witnesses before they testify.
2 But there's a difference between being a prepared witness and a
3 trained seal. So some of these things, these guys they repeat
4 over and over, over and over again, other times when you ask
5 them questions they haven't heard before they lapse into their
6 illegal alien story.

7 Now, let's talk about the hiding stuff. Did they
8 hide? I don't know. Let's presume they did. Now,
9 Mr. Bermudez from the Department of Labor testified. Seems
10 like a nice guy. Said he went to the job site. He's not on
11 the border patrol, but he is an investigator. So, maybe
12 someone thinks they're hiding. Do you think anyone really has
13 to tell illegal aliens to hide when government investigators
14 come?

15 Do you think anyone has got to tell illegal aliens to
16 use fake ID when they have fake ID and they have done it
17 before?

18 Do you think anyone has got to tell illegal aliens who
19 had this fake identification to give fake names to agents? Do
20 you think they have to be taught that?

21 Look, if the Department of Labor came to a place I
22 worked or maybe where you worked -- we'll pick on you,
23 instead -- maybe you don't want to talk to them and you're
24 citizens. You think illegal aliens want to talk to these
25 people? Look, making up stuff and lying, it's what they do.

Dblgnar3

Summation - Mr. Burke

1 It's part of who they are once they sneak in to have this
2 stuff. It's like asking ducks why do you swim in a Lake?
3 That's what ducks do. Why do illegal aliens lie to government
4 investigators? That's what they do.

5 Now, let's discuss some of the workers separately.
6 And sometimes now, if I make a mistake, don't go by me, you go
7 by the transcript and there was a lot of workers -- you can get
8 them jumbled up in your head.

9 Antonio Torres was the first guy. He admits at the
10 Department of Labor -- excuse me -- in court he said Luperio
11 Naranjo told him to hide. He admitted that in the past at the
12 Department of Labor that he said that Edgar Avila told him to
13 hide.

14 And it seems to be a theme that runs through this:
15 Once these guys are caught lying, why did you make up that
16 name, why did you say this, why did you lie about that, it's
17 always, you know, the devil made me do it. They made me lie.
18 Luperio made me lie. Somebody else made me lie. Sometimes he
19 says it's Luperio Naranjo who told him to hide; other times he
20 says Edgar Avila told him to hide.

21 What else is interesting -- maybe it's interesting --
22 it depends on what you think, the first guy, Torres, admits to
23 having a fake Social Security card and is he one of the guys
24 that lost it? Yeah, he lost it. He lost it a long time ago.
25 Then it turns out -- forgive me while I fumble through these

Dblgnar3

Summation - Mr. Burke

1 documents -- then it turns out he's got a fake green card page
2 66 line 18. Now you met with the government, correct, certain
3 times before you testified, right?

4 Answer: Yes.

5 Did you tell them you had a fake green card?

6 Answer: No.

7 Did they ask you if you had a fake green card?

8 Answer: No.

9 So, he told him them had a fake security card. He
10 didn't tell them he had a fake green card. It's not the
11 biggest deal in the world, but now, he's got a plea agreement.
12 I don't know if you can put this stuff up can you by any
13 chance.

14 MR. WIBLE: Objection. I don't think there was any
15 testimony about a plea agreement.

16 MR. BURKE: From Antonio Torres.

17 THE COURT: I don't recall any either. Is there
18 something in evidence?

19 MR. BURKE: Judge, it could be my mistake. This
20 agreement may not be in evidence. I'll move on if that's the
21 case.

22 THE COURT: What was the exhibit number?

23 MR. BURKE: 3502.

24 MR. WIBLE: It's a nonprosecution agreement. Not a
25 plea agreement.

Dbldgnar3

Summation - Mr. Burke

1 MR. BURKE: Forgive me. It's my mistake. Okay. I
2 used the wrong words. I said a plea agreement. It's not a
3 plea agreement. It's a nonprosecution agreement. That's me.
4 But this is here. Is there a chance I can see 3502-16, just
5 the first page. Can you blow this first paragraph up.

6 This is the deal they made, the no-prosecution deal.
7 And he's not going to be prosecuted for coming into the
8 country, number one; number two, his possession of false
9 identification documents from '09 to the present, all right.
10 It goes on, but here's one, to the extent Torres has disclosed
11 such conduct to this office as of the date of this agreement,
12 all right.

13 So he won't be prosecuted as long as he tells them
14 about his fake ID. Is there a second page here, just the date
15 with the third page, before the trial, October.

16 So, not to be too lawyeristic about this, he admits on
17 the witness stand he didn't tell them about his green card.
18 He's got a fake green card. So, theoretically, he could be
19 prosecuted for having a fake green card. Are they going to do
20 it? No. Why? He's on their team.

21 MR. WIBLE: Objection, your Honor.

22 MR. BURKE: I would -- I'll take it back. I don't
23 know what they're going to do. I argue this to you, I don't
24 believe they will because he's on their team.

25 Angel Lojano, the second guy who testified, now, look

Dblgnar3

Summation - Mr. Burke

1 he's back here almost in a hole when he testifies over here.
2 He's way down here. Maybe his view of Mr. Naranjo is obscured
3 because of the screen there. There were books there. But they
4 ask him: Do you see Luperio Naranjo? He says no.

5 He doesn't see him in the courtroom. They asked him
6 do you see Jover. At first he says no, then he says, yes, I do
7 see Jover.

8 Look, this is not an identification case. What I want
9 you to think about, does Angel Lojano really know what's going
10 on?

11 On page 94, he says either Jover or Luperio told him
12 to lie to investigators. Wrong book. It's 105, 106, this is
13 cross examination by learned cocounsel, 105: It's fair to say
14 Mr. Naranjo, Jover Naranjo or Luperio Naranjo, did not tell you
15 to lie to those investigators, correct?

16 Answer: Yes.

17 So when they came on that day, you lied because you
18 just wanted to lie, would that be fair to say, sir?

19 Answer: Yes.

20 So, finally we get someone who admits they can lie on
21 their own. What else about Mr. Torres and I'm saying, like, is
22 he credible, do we know what's happening with him. Does he
23 know what's going on? 101, line 15: How much did you say you
24 were paid?

25 Answer: 15 an hour.

Dblgnar3

Summation - Mr. Burke

1 Was that accurate?

2 No.

3 Then he continues.

4 How much were you paid an hour?

5 Can you repeat the question?

6 Question: Excuse me. I asked you how much you were
7 paid for your work at the job site?

8 Answer: Fifteen.

9 So when you told the investigator that you were paid
10 15 an hour, was that true, was that accurate?

11 Yes.

12 So in that one page he goes from saying the \$15 is not
13 accurate to saying it is accurate. Is it the biggest deal in
14 the world? No. But it's something that you have to think
15 about when you say does this guy know what he's talking about?
16 Is he credible? Is he reliable? Is he proof beyond a
17 reasonable doubt? He's the guy who said he still has his fake
18 ID. They didn't even ask him for it.

19 Criollo was the next fellow who testifies. It's
20 Lojano's brother. He says, yeah, I talked to my brother about
21 the whole thing, what happened. He threw his stuff away, he
22 threw his cards away, yeah, I threw it away.

23 What else is interesting? He says his last day, they
24 call him up and tell him don't come to work again. That's the
25 day that he didn't go to work, right. He said it was okay, he

Dblgnar3

Summation - Mr. Burke

1 had an excuse, but do you think it's a coincidence he doesn't
2 show up for work one day, they call him up and tell him don't
3 come again?

4 They talked about money. He said, no, it wouldn't be
5 a bad thing; the money wouldn't be a bad thing.

6 Pablo, that is, Pedro Pablo, was the next guy. He
7 meets with the union six or seven times, four or five times
8 with the Department of Labor.

9 Can I see 406 and 420 for a second. Now, that's 406,
10 the guy in the white shirt is the guy -- is the gentleman from
11 the union who testified. Can I see 420. Same fellow. The
12 union guy identified himself.

13 Now when he testified, he said -- that's the guy from
14 the Department of Labor. That's how close everyone was working
15 together here. He can't tell the Department of Labor from the
16 union. They're all meeting together. They're all hanging out
17 together.

18 What else is significant? Page 199. He says these
19 words "it's not about the money," we're asking you're going to
20 get more money, he says it's not about the money, but if the
21 money comes, it's okay.

22 Now, I work for a very smart man a long time ago and
23 he told me this: When someone says it's not about the money,
24 it's about the principle of the thing. That's how you know
25 it's about the money. All these guys, all these guys stand to

Dblgnar3

Summation - Mr. Burke

1 get money and that's what this is about.

2 Now, look, they may not be sophisticated in many ways.
3 They may be from outside our cultural orbit. They're not
4 stupid. They're intelligent. They know what they're going
5 to -- what they have been getting paid and they know what they
6 can get.

7 Clever Pauta. Now, going to the government's
8 summation they mentioned, they said that Luperio
9 Naranjo -- sometimes I hear these things wrong -- they said in
10 their summation Luperio Naranjo gave Pauta fake ID.

11 Page 228, line eight: What, if anything, did you use
12 to get past the security booth.

13 Answer: Well, I was given an ID.

14 Question: Whose ID did you use?

15 Answer: Luperio Jr.'s.

16 Who gave you that ID?

17 Edgar Avila?

18 Who is that? The foreman.

19 Not Luperio. Edgar. Did it really happen? The story
20 shifts. It's not Luperio. He's another guy. He lost his
21 stuff.

22 Let's go to Campoverde, last but not least. Now
23 Campoverde is the guy who goes from Ecuador to Colombia to the
24 Dominican Republic to Mexico to the United States. I mean, you
25 can have a Masters Degree and you can't get a plane ticket now

Dblgnar3

Summation - Mr. Burke

1 to Miami, right. He can figure this out. He knows how to do
2 things. And it's about money and it's about meeting with the
3 union. He had an accident. He got workers comp. And can I
4 see 844 from the government's exhibit. Those forms that we had
5 been looking at. Look, can you blow up this thing here.

6 Campoverde. On cross examination he says: Yeah, I
7 signed it, that's my signature. Through a series of questions:
8 Oh, you signed that?

9 On the document itself it says, look, you're supposed
10 to be a resident alien or U.S. citizen. He's not. Okay.
11 What's even better, right, he's there. He starts saying, oh,
12 someone else filled it out. I just signed it.

13 Then there's a break. The next day, he's on the stand
14 the next day. They put -- this is Mr. Jacobs on redirect --
15 they put 844 up there. They put it on the screen. And he says
16 to him: Where were you working when you received this
17 document?

18 No, I didn't receive the document.

19 Have you ever seen this document before?

20 Answer: No.

21 Can we go to page two of the exhibit.

22 Have you seen this document before?

23 No.

24 Is that your signature on the document?

25 No.

1 So, this guy goes from one day he signed it to the
2 next day he doesn't remember ever seeing this thing before in
3 his life. Unto itself, right, let's be honest, unto itself
4 it's not the biggest deal in the world. But this is not proof
5 beyond a reasonable doubt because this is what they're relying
6 on. These are the witnesses the government is relying on for
7 proof beyond a reasonable doubt. And from day-to-day they can
8 shift their testimony unless they rehearse parts of it ten, 20,
9 30 times.

10 Two guys lost their ID cards, two guys threw it away,
11 one of them still has it, and out of the six guys who
12 testified, nobody turns in their fake identification to the
13 government, none of these folks, right?

14 Alone and you can always say, well, there's a lot of
15 them, we'll stick them all together. Maybe we can get beyond a
16 reasonable doubt that way. We'll lump them all together.
17 Alone or together they're not credible, they're not reliable.

18 What they have in common is that they have been
19 rehearsed many times about things to say, they blame people for
20 things they have done, and the fact that if they cooperate and
21 stick with their no-prosecution agreements, they don't get
22 prosecuted, they can stay here, and they can get more money.

23 Their testimony is all of a piece. You should not be
24 dividing their testimony, I submit to you, I argue to you into
25 like, oh, I can believe him about this, but I can't believe him

Dblgnar3

Summation - Mr. Burke

1 about that. What I'm saying is believe whatever you want, but
2 their testimony is not proof beyond a reasonable doubt.

3 The fellow from the Department of Labor, he never sees
4 Luperio Naranjo tell anyone to hide, you know, red alert, the
5 Department of Labor is here. He comes up in plain clothes.
6 When I say plain clothes. He's not a cop. He doesn't have a
7 uniform. He dresses normally, he just walks up there.

8 He doesn't see anybody hiding like -- this is what I
9 mean, you don't really know what happened. He never sees
10 anyone hide. He says it's an open space. I didn't see anybody
11 hiding. And why is he there? He's there because of the union
12 complaints.

13 He testified he said he's there's a civil suit pending
14 and there's been no decision yet. He also says under the
15 Davis-Bacon Act, the general contractor, which is Lettire, is
16 responsible for any back-wages owed under the prevailing wage
17 act by the subcontractor.

18 Let's talk about the union guy. Look, I may be
19 getting the name -- he works for the international unions of
20 the world. I forgot. It's an organization that's funded by
21 unions all over the country. And then when they find people
22 doing nonunion work, that's when he swings into action. He's a
23 union recruiter.

24 They get more members and more people in the union and
25 they can get more money. And then they can give more money

Dblgnar3

Summation - Mr. Burke

1 back to the unions and hire more people. And there's nothing
2 wrong with unions, right? It's America. You have a right to
3 have a union.

4 But this is extreme. He's down there 30 or 40 times.
5 They're Marching around. They're blowing up a big rodent,
6 right? They're giving out stuff to the workers. This is the
7 engine that starts this thing off.

8 And he's obviously talking to them about money at
9 certain points, they're talking about back-wages, what they can
10 get. They have meetings at cafes, restaurants. They're
11 allowed to. That's fine. They're all there, they're all going
12 over it, over it and what is significant, I submit to you, they
13 video tape interviews, they videotape interviews at one of the
14 first meetings, and he has no idea what I went through he has
15 no idea what I went threw so we get to hear these guys after
16 they have been prepped and gone over stuff ten, 20, 30 times,
17 right, but we don't get to hear it the first time because we
18 don't know where the tapes are.

19 And it's obvious he's working hand in glove with the
20 Department of Labor. He brings them to the meetings, right.
21 Now he said -- excuse me -- Bermudez said look, I didn't talk
22 to the guys from the union. They went to union hall. They all
23 sat down together. They're all doing this together.

24 What else did you notice, people from prominent
25 organizations testified. Ms. Gingrich. She's the lady from

Dblgnar3

Summation - Mr. Burke

1 Floyd Advisors. What do they have in common? She didn't know
2 what her firm was paid. Mr. Pine, the first guy who testified,
3 he works for Lettire, he's the financial man. He doesn't know
4 if Lettire made profit. Michelle Lettire, she doesn't know if
5 they made any profit.

6 So the sophisticated people don't like to talk about
7 what profit they made. The workers told you they told us 13
8 bucks an hour, we got paid 15 -- 13 bucks an hour. They told
9 us 15, they got paid 15.

10 Michelle Lettire also said the company had to pay a
11 fine. They didn't pay prevailing wages for some of their
12 workers. They didn't have the correct kind of contract, and
13 she said the general contractor is responsible for the
14 subcontractor and the general contractor has got to pay any
15 back prevailing wages owed by the subcontract. Okay, 412.

16 And as far as you know, Lettire has agreed to pay any
17 back-wages that Enviro owes its workers for any violation of
18 the prevailing wage act, right?

19 Answer: I guess, yeah.

20 Now, what else that I want you to know about Michelle
21 Lettire. Now, I think it's a big company. They got millions
22 of contracts. She works there for 30 years. We asked her
23 questions about -- I'm paraphrasing now -- wasn't there a
24 settlement? Didn't Lettire have a settlement? What's the
25 terms of the settlement?

1 She goes, I don't know what's going on with the
2 settlement, I hardly know anything about that. No one tells
3 me.

4 So, when it's their witness who don't know about the
5 terms of a contract for a business, it's okay. When
6 Mr. Luperio Naranjo doesn't know about the terms of a contract
7 that's 81 pages long and in a different language, it's not
8 okay. Then they say, oh, he must know. He's the father.
9 That's not proof beyond a reasonable doubt. That's conjecture.
10 It's nonsense.

11 Look, at the end of the day, there's no proof beyond a
12 reasonable doubt that he committed any of these crimes. Now,
13 the prosecution is going to do one or two things or both to
14 Luperio Naranjo on rebuttal. They'll say look at these
15 documents, look at all these documents. He didn't sign the
16 contract. He didn't make out the paperwork. He didn't sign
17 the checks. He didn't go meet with Lettire. He didn't meet
18 with the Department of Labor.

19 Look, I'm sure he got checks, I'm sure he signed them,
20 cashed them, the corporation, right. He's not the corporation.
21 They can pay them whatever they want and essentially that's
22 what the witness from HPD said, the last guy. And the standard
23 of proof is not maybe, could have, possibly. It's beyond a
24 reasonable doubt, okay?

25 Forget about the documents. Let's say, okay, ladies

1 and gentlemen, on government's rebuttal, forget about the
2 documents; just go by the testimony of those workers. You
3 heard them. You heard for the most part rehearsed testimony,
4 some of it was ridiculous, it's not reliable, it's not
5 credible. And remember they all have deals. It's not a plea
6 deal, the government is right from before. They're
7 nonprosecution agreements.

8 They're not going to be prosecuted if they come and
9 testify and meet with them if they tell the truth. We heard
10 that a bunch of times, if they tell the truth. Also one of the
11 witnesses admitted this: Who determines whether or not you're
12 telling the truth? They do, the government does.

13 And you can't just believe -- withdrawn. You can do
14 whatever you want. You're the jury. You shouldn't believe
15 parts of this thing, parts of their testimony when you know
16 they're lying.

17 Statements by Jover that they're saying he made, the
18 Court has instructed you before that that's not evidence
19 against Luperio. You don't impute knowledge to him. And the
20 Court will define all these terms, knowingly, intentionally,
21 willfully. He's got to know he's doing mail fraud.

22 The government might say, look, Mr. Burke will have
23 you believe all the witnesses got together and started lying.
24 And if we wanted to have them lie, we'd have them all tell the
25 same story. Well, ladies and gentlemen, these witnesses did

Dblgnar3

Summation - Mr. Burke

1 pretty good. We got this far. And when you ask them questions
2 that are not in the script, that's when they come off it.

3 Now, look it's separate trials, separate evaluation of
4 the evidence, separate verdicts. And don't forget, the
5 government witnesses, the workers, when you decide their
6 credibility, they all had these no-prosecution agreements.
7 That doesn't of itself mean they have to be lying. What it
8 mean is the government has leverage on them and it can affect
9 the way they testify.

10 "To know that you do not know is the best; to pretend
11 to know when you do not is a disease." Lao Tzu.

12 At the end of the day, you can only pretend that
13 there's proof beyond a reasonable doubt against Mr. Naranjo.
14 They never proved the elements of the crime against him. He
15 started out this case innocent. They didn't meet their burden
16 of proof. He's innocent today. The case will be in your hands
17 soon. I ask you to find him not guilty of all the charges in
18 the indictment. Thank you.

19 THE COURT: Thank you. Does the government want to do
20 their rebuttal now or after lunch?

21 MR. JACOBS: If the jury is happy waiting 20 minutes,
22 we will do the rebuttal now.

23 Thank you, Judge.

24 THE COURT: Proceed.

25 MR. JACOBS: Ladies and gentlemen, you have just heard

1 a series of remarkable arguments from two very talented defense
2 counsel who have done their best for the last couple of hours
3 to try to distract you from the evidence in this case and say
4 look over here when what you should be looking at is right here
5 in front of you.

6 Now, just as an initial matter, just to be clear, the
7 defendant advice no burden in this case. They don't have to do
8 anything. They don't have to call witnesses. They don't have
9 to put on evidence. They don't have to make arguments.

10 Here, they did make arguments and when they do that,
11 it's appropriate and proper and you should scrutinize those
12 arguments carefully and just see if they make sense. See if
13 they fit with the evidence you've seen and what you've heard.

14 Now, one argument you heard from both defense counsel,
15 you heard it at some length is that you shouldn't believe the
16 workers you heard testify. This is a remarkable argument.
17 It's remarkable the way they made the argument.

18 They argue that they entered the country illegally,
19 they committed crimes, they want money, so you shouldn't
20 believe them. Here's what's interesting about what you heard:
21 They didn't say those people weren't working at 100th Street.
22 You didn't hear either defense counsel say they were lying when
23 they told you they were working at 100th Street. Can there
24 really be any dispute about that? They were photographed
25 there. They all told you they worked there. The work somehow

Dblgnar3

Summation - Mr. Jacobs

1 got done. Someone was doing it and if they were working at the
2 job site, let's just start with that, there was a fraud.
3 They're not on the certified payrolls.

4 Were they lying when they said they got \$13 an hour or
5 \$15 an hour instead of the prevailing wage of \$49 or 33?
6 Neither defense counsel said they really did get paid \$49 an
7 hour. There's no question that that testimony that they got
8 \$13 and \$15 an hour was accurate. It was corroborated by all
9 the other evidence.

10 Were they lying when they said the defendants' friends
11 and family didn't work at the job site like Gloria Feijo and
12 Marcia Gonzalez and the others, Luperio Naranjo Jr., was that
13 not credible testimony when the workers said those people
14 didn't actually work at the job site even though their names
15 are throughout the certified payrolls? Nobody ever saw them at
16 the job site.

17 And again, if that's -- you credit that testimony,
18 there's a fraud here because the certified payrolls say that
19 those people worked at that job site. And I think the
20 inability to really explain what of this -- the main parts of
21 the testimony, the inability of defense counsel to say which of
22 those main parts should not be credited really exposes what's
23 going on here because in large part the testimony of the
24 workers was consistent, they corroborated each other, and it
25 was consistent with all the other evidence you saw and heard in

1 this case.

2 Now, the testimony -- the argument that workers you
3 shouldn't believe them it's remarkable for another reason which
4 is that their incentive is to tell the truth. They all have
5 these nonprosecution agreements with the government that
6 provide they won't be criminally prosecuted for certain crimes,
7 but in order to get that protection, in order to keep it, they
8 have to tell the truth on the witness stand. That's their
9 incentive here because if they are not truthful, that
10 protection goes out the window.

11 Now, it's worth pointing out the protection is
12 actually more limited than Mr. Burke said. He said that they
13 get to stay in this country and that's just not true. Nothing
14 in those agreements says that the separate agency that handles
15 immigration won't deport them. That's not a part of the
16 agreements. The only protection the agreements provide is
17 against being criminally prosecuted for certain specific crimes
18 listed in the agreements. You'll be free to look at them
19 yourselves in the jury room. They're government exhibits 3500
20 in different numbers.

21 And in order to keep that limited protection, they
22 have to tell the truth. Now, did they do that? You saw their
23 demeanors on the witness stand. You saw how they answered
24 questions. You saw how they acknowledged when they had been
25 inaccurate in some respect. You saw how they made efforts to

1 give answers to the questions that were being posed to them,
2 sometimes repeatedly. You saw how their testimony, the
3 testimony of each worker was in large part consistent with the
4 testimony of the other workers.

5 Another reason and the last reason, this argument
6 about not believing the workers is remarkable is because the
7 basis for the argument the fact that the workers were here
8 illegally and committed crimes really demonstrates exactly why
9 these defendants chose these workers as part of the scheme,
10 because part of the scheme was to hire workers who they thought
11 wouldn't talk to law enforcement.

12 The reason the defendants say not to trust these
13 workers is the reason they hired them because they thought they
14 could rely on these particular workers to keep the scheme a
15 secret.

16 Now, another theme, and I just want to address a few
17 of the themes defense counsel raised in their arguments I can't
18 address all of them and it's the evidence that controls, but
19 another argument they both made is that this case has something
20 to do with the labor union.

21 This argument is a complete distraction. The case is
22 not about a union. What did you hear about the labor union?
23 You heard the two guys periodically went to the job site on
24 East 100th Street, handed out fliers that listed the prevailing
25 wage information, talked to workers when they could, shot

Dblgnar3

Summation - Mr. Jacobs

1 video, told the Department of Labor what was going on. That's
2 it. There's no evidence that the union did anything illegal or
3 improper or was somehow part of the prevailing wage scheme.

4 The idea that this case has something to do with the
5 union, that there's some undercurrent, as Mr. Donaldson kept
6 saying, is a pure distraction. It's like the giant inflatable
7 rat that you heard defense counsel mention a few times in cross
8 examination. It is simply a distraction, trying to get you to
9 look here, instead of at the evidence.

10 And one other -- before I move on to the next thing,
11 there's one other thing worth pointing out about the nature of
12 some of the testimony defense counsel challenged that the
13 workers gave. They challenge a few of the smaller things they
14 testified about, not the amount they made or whether they
15 worked on the job site, but some other things.

16 They say Angel Lojano was lying about Luperio Naranjo
17 giving him the Franklin Chiriboga ID card, and you can tell
18 that because when he ultimately got an ID card in his own name,
19 the one that says Angel Lojano, he made that; or they say
20 they're lying about hiding because no one ever saw them hiding
21 even though how are investigators supposed to see them if they
22 were hiding? It's not clear.

23 They say the signatures aren't forgeries even though
24 the workers who said the signatures were forged in large part
25 hadn't seen those sign-in sheets before. That was their

1 testimony. They knew it was a forgery because they had never
2 seen that document. They never signed in to work.

3 As you are evaluating all this testimony, one thing to
4 keep in mind is that memory about big things that happened four
5 years ago can be clear even if the smaller details are less
6 clear.

7 Everyone walks by the big statue coming into the
8 courthouse. But can you say she is standing on the left foot
9 or the right foot? The big statue of justice, is she standing
10 on the left foot or right foot, even though you've seen it
11 every day. That's a small detail. It's the kind of thing you
12 don't remember, but that doesn't mean you don't see the statue.

13 Mr. Donaldson spent a good portion of his summation
14 talking about something that his client's own words prove is
15 not true. He spent a good portion of his summation trying to
16 suggest to you that the wage determination, the information
17 about what the prevailing wages are, that Jover Naranjo didn't
18 know that information, that he wasn't given it at the start of
19 the project.

20 But what did Jover Naranjo's own words say about this?
21 Government Exhibit 1003, Jover Naranjo's prior testimony under
22 oath.

23 "Q. How did you learn the differences between Tier A and Tier
24 B workers.

25 "A. That's in the schedule. Normally they put it in the

Dblgnar3

Summation - Mr. Jacobs

1 contract.

2 "Q. Was it in the contract that you had on the Ciena Project?

3 "A. In the beginning no, but the following week, yes, he gave
4 it to me.

5 "Q. But at the time you signed it, did you know that you had
6 to categorize workers as Tier A or Tier B?

7 "A. Yes."

8 And why? Because he had been doing prevailing wage
9 work for 20 years, more than that. So of course he knew the
10 wage schedule. He said that in Government Exhibit 1003, when
11 they told me it was prevailing wage, I knew more or less was
12 what was going to apply because I was doing other prevailing
13 wage.

14 The idea that Mr. Jover Naranjo didn't know the
15 prevailing wage rate is simply preposterous. And not only
16 that, it's listed in the very first certified payroll that
17 Jover Naranjos from the first week of work. The prevailing
18 rates are right there in a column that documents Jover Naranjo
19 signed it and says it's accurate.

20 Mr. Donaldson spent a good portion of his time working
21 about how maybe there is something else going on, maybe there's
22 something going on with the wage rates. There is nothing going
23 on. Jover Naranjo knew exactly what those rates were from the
24 very start.

25 Mr. Donaldson also said that there's no mailing here

Dblgnar3

Summation - Mr. Jacobs

1 and that the government is trying to switch something on you,
2 switch its theory in some way with respect to the mailing. Not
3 true. The beginning of this trial, I said they're charged with
4 mail fraud because the certified payrolls that are part of the
5 scheme were mailed from Lettire, the general contractor, to the
6 city agency that reviews them. And that's exactly what the
7 evidence showed.

8 What did you hear? You heard that David Rosenthal
9 from HPD testified that he received the certified payrolls from
10 Lettire, the general contractor. And he was even more specific
11 than that; he said it was by Fed Ex. And then Michelle
12 Lettire, the bookkeeper, testified she mailed the certified
13 payrolls. How? By Fed Ex. To whom? David Rosenthal. Their
14 testimony matched up precisely. You heard from the person who
15 sent and received the mailings and it was unchallenged.

16 You heard from Mr. Burke at some length that Luperio
17 Naranjo, he's not the owner here, he didn't sign the contract,
18 he didn't sign the payrolls, and so you should find him not
19 guilty. Let's just look at this argument for a few minutes.

20 First I expect Judge Rakoff will instruct you that
21 even a single act is sufficient to bring a defendant into a
22 conspiracy, a single act. Conspirators don't have to play
23 equal roles. They don't have to play the same roles. One act
24 can be enough.

25 And here you have numerous acts from Luperio Naranjo

Dblgnar3

Summation - Mr. Jacobs

1 that make him part of this scheme. As Mr. Wible explained
2 Luperio Naranjo told Joaquin Pablo to tell investigators that
3 he makes \$34 an hour. Where did that number come from? It's
4 the prevailing wage for work Pablo was doing. That's one act.
5 He tells Criollo and Lojano to use the names Fabian Avila and
6 Franklin Chiriboga, two names that appear right next to each
7 other on a lot of the certified payrolls.

8 He tells Antonio Torres to use the name Luperio
9 Naranjo Jr., another name that appears on the certified
10 payrolls. Each time a worker is interviewed on site, somehow
11 that worker appears on the certified payrolls for that week.
12 Why? Because Luperio Naranjo makes sure that that information
13 is passed on to Jover Naranjo.

14 And of course, Luperio Naranjo knew that the
15 Department of Labor was investigating here. He spoke with Luis
16 Bermudez on September 1 near the beginning of the project and
17 Bermudez told him Bermudez was with the Department of Labor.
18 Luperio Naranjo also spoke with the union representative. And
19 when he saw the union representative handing out those sheets
20 with the prevailing wage on them, he told the workers to throw
21 them to the ground. He knew exactly what was going on here.

22 And just one other point here, Mr. Burke spent some
23 time arguing that that Luperio Naranjo, he wasn't doing any
24 demolition and we were, the government was lingering on that in
25 some form of prejudice based on Luperio Naranjo's age. That is

Dblgnar3

Summation - Mr. Jacobs

1 simply false.

2 The reason it matters that Luperio Naranjo wasn't
3 doing demolition is because the certified payrolls say that he
4 was. They say he was doing demolition, and they say that
5 because people need to be listed on the certified payrolls or
6 otherwise, the government would wonder how the work is getting
7 done. They weren't listing the real workers, so they had to
8 list people. And one person they listed was Luperio Naranjo
9 saying he's doing demolition. It matters that he wasn't doing
10 demolition because that's what the certified payrolls say he
11 was doing and it was a lie.

12 You heard Mr. -- I just have two left. You heard
13 Mr. Donaldson say that Jover Naranjo wasn't involved in any
14 sort of witness tampering. What are some examples? I'll just
15 give a couple. Jover Naranjo told Angel Lojano to lie to the
16 Department of Labor and say he was only at the job site once
17 shoveling snow.

18 And Mr. Donaldson says, well, on cross examination
19 Lojano testified that Jover said there's nothing to be done.
20 But nothing that was said on cross examination by Angel Lojano
21 rebutted that he also told -- that he was also told by Jover
22 Naranjo to lie, and the lie he was told to tell is perfectly
23 consistent with what's going on.

24 He's told to say I was shoveling snow and, in fact, it
25 is the winter when he's being told this. It's not January.

Dblgnar3

Summation - Mr. Jacobs

1 And he's told to say he's only at the job site once because, of
2 course, he had been seen there by the very investigators who he
3 spoke with that Jover Naranjo was so concerned with.

4 Jover Naranjo also gave that document with the list of
5 addresses for the workers to Luis Bermudez in deliberate effort
6 to prevent the witnesses from being found, to prevent them from
7 ever testifying at any proceeding.

8 (Continued on next page)

DblQnar4

Rebuttal - Jacobs

1 MR. JACOBS: Criollo was fired and the Luperio Naranjo
2 tells him to leave the state. Pablo is given a fake check and
3 Jover Naranjo says this is to make it look like you were being
4 paid the prevailing wage or he says it's to make it look like
5 you were working for the company back in August on the job
6 site; I need paperwork to prove it. Pauto is given that phony
7 declaration to sign, and he refuses to sign it and say that he
8 withdraws his name as an underpaid worker. Of all of these are
9 examples of witness tampering.

10 Like I said, I don't have time here to address each of
11 the arguments you heard from defense counsel. So with the
12 arguments I haven't addressed, simply look at the evidence.
13 The evidence answers all of those arguments. But I do want to
14 say one last thing before I sit down.

15 The general idea from each of defense counsel is that
16 you should look at each little piece of evidence: Look at it
17 in isolation; pick it apart. But as you're evaluating the
18 evidence, look at what the evidence shows as a whole. What
19 does the big picture here show. It shows workers got paid \$13
20 or \$15 an hour on that job site. They weren't paid the
21 prevailing wage. To hide this, the certified payrolls were
22 loaded with lies. The certified payrolls were Fed Exed from
23 the general contractor to the City. Jover Naranjo admitted
24 what he did to Elizabeth Gingrich. Jover Naranjo gave that
25 fake list of employees to Luis Bermudez. Jover Naranjo gave

DblQnar4

Rebuttal - Jacobs

1 doctored checks to Lettire. When Lojano didn't play along,
2 they fired him. Jover Naranjo told him to lie. When Criollo,
3 who happened to be Lojano's brother, they fired him too, and
4 Luperio said, "You should leave New York State."

5 This evidence, and all the other evidence you've seen
6 and heard, firmly establishes the defendant's guilt. I want to
7 close by asking you to do the same three things I asked you to
8 do at the beginning of this trial: Follow the law, apply the
9 evidence, use your common sense, and return a verdict of guilty
10 on all counts.

11 MR. JACOBS: Thank you.

12 THE COURT: Thank you very much.

13 Ladies and gentlemen, we are going to let you go have
14 your lunch now. It's been preordered so you will have lunch in
15 the jury room. I want to make sure that you understand you
16 should not begin your deliberations yet. Do not discuss the
17 case among yourselves in any way, shape or form because there
18 is one thing still to come, which is my instructions of law.
19 Until you hear them, you must not deliberate on the case. You
20 must not discuss anything you heard this morning. You must not
21 discuss the evidence of the case.

22 So have a terrific lunch. We will see you at 2:00. I
23 will give you my instructions on the law, and then you will
24 start your deliberations.

25 (Jury excused)

dblg nar1

1 THE COURT: Those were four very fine summations. I
2 congratulate counsel on a job well done. We will see you at
3 2:00.

4 (Luncheon recess)

5 AFTERNOON SESSION

6 2:00 p.m.

7 (In open court; jury present)

8 THE COURT: I'm giving my courtroom deputy copies of
9 the charge to distribute to the jury and also to the court
10 reporter and to counsel, and we will, in addition, mark one
11 copy as Court Exhibit 2 to be docketed.

12 Bring in the jury.

13 (Jury present)

14 THE COURT: Ladies and gentlemen, you have now a copy
15 of my instructions. We will read them together now and then
16 you will have them with you to take with you into the jury room
17 when you begin your deliberations. If you look at the table of
18 contents, you will see that the instructions are divided into
19 three parts:

20 First, are the general instructions. These
21 instructions apply not only to this case but to all cases.
22 Then there are the instructions that apply to more specific
23 charges of this case. And then there are some concluding
24 instructions about how you fill out your verdict form and
25 things like that.

DblQnar4

Charge

1 So let's begin with instruction number one.

2 We are now approaching the most important part of this
3 case, your deliberations. You have heard all the evidence in
4 the case, as well as the final arguments of the lawyers for the
5 parties. Before you retire to deliberate, it is my duty to
6 instruct you as to the law that will govern your deliberations.
7 As I told you at the start of this case, and as you agreed, it
8 is your duty to accept my instructions of law and apply them to
9 the facts as you determine them.

10 Regardless of any opinion you may have as to what the
11 law may be or ought to be, it is your sworn duty to follow the
12 law as I give it to you. Also, if any attorney or other person
13 has stated a legal principle different from any that I state to
14 you in my instructions, it is my instructions that you must
15 follow.

16 Because my instructions cover many points, I have
17 provided each of you with a copy them, not only so that you can
18 follow them as I read them to you now, but also so that you can
19 have them with you for reference throughout your deliberations.
20 In listening to them now and reviewing them later, you should
21 not single out any particular instruction as alone stating the
22 law, but you should instead consider my instructions as a
23 whole.

24 Your duty is to decide the factual issues in the case
25 and arrive, if you can, at a verdict. You, the members of the

DblQnar4

Charge

1 jury, are the sole and exclusive judges of the facts. You pass
2 upon the weight of the evidence; you determine the credibility
3 of the witnesses; you resolve such conflicts as there may be in
4 the testimony; and you draw whatever reasonable inferences you
5 decide to draw from the facts as you determine them.

6 In determining the facts, you must rely upon your own
7 recollection of the evidence. To aid your recollection, we
8 will send you all of the exhibits at the start of your
9 deliberations, and if you need to review particular items of
10 testimony, we can arrange to provide them to you in transcript
11 or read-back form.

12 Please remember that none of what the lawyers have
13 said in their opening statements, in their closing arguments,
14 in their objections or in their questions is evidence. Nor is
15 anything I may have said evidence. The evidence before you
16 consists of just three things: The testimony given by
17 witnesses that was received in evidence, the exhibits that were
18 received in evidence, and any stipulations of the parties that
19 were received in evidence.

20 Testimony consists of the answers that were given by
21 the witnesses to the questions that were permitted. Please
22 remember that questions, although they may provide the context
23 for answers, are not themselves evidence; only answers are
24 evidence, and you should therefore disregard any question to
25 which I sustained an objection. Also, you may not consider any

DblQnar4

Charge

1 answer that I directed you to disregard or that I directed be
2 stricken from the record. Likewise, you may not consider
3 anything you heard about the contents of any exhibit that was
4 not received in evidence.

5 Furthermore, you should be careful not to speculate
6 about matters not in evidence. For example, there is no legal
7 requirement that the government prove its case through a
8 particular witness or by use of a particular law enforcement
9 technique. Nor should you speculate about why one or another
10 person whose name may have figured in the evidence is not part
11 of this trial or what his or her situation may be. Your focus
12 should be entirely on assessing the evidence that was presented
13 here for your consideration.

14 It is the duty of the attorney for each side of a case
15 to object when the other side offers testimony or other
16 evidence that the attorney believes is not properly admissible.
17 Counsel also have the right and duty to ask the Court to make
18 rulings of law and to request conferences at the side bar out
19 of the hearing of the jury. All such questions of law must be
20 decided by me. You should not show any prejudice against any
21 attorney or party because the attorney objected to the
22 admissibility of evidence or asked for a conference out of the
23 hearing of the jury or asked me for a ruling on the law.

24 I also ask you to draw no inference from my rulings or
25 from the fact that upon occasion I may have asked questions of

DblQnar4

Charge

1 certain witnesses. My rulings were no more than application of
2 the law and my questions were intended only for clarification
3 or to expedite matters. You are to expressly understand that I
4 have no opinion as to the verdict you should render in this
5 case.

6 You are to perform your duty of finding the facts
7 without bias or prejudice as to any party. You are to perform
8 your final duty in an attitude of complete fairness and
9 impartiality. You are not to be swayed by rhetoric or
10 emotional appeals.

11 The fact that the prosecution is brought in the name
12 of the United States of America entitles the government to no
13 greater consideration than that accorded any other party. By
14 the same token, it is entitled to no less consideration. All
15 parties, whether the government or individuals, stand as equals
16 at the bar of justice.

17 Please also be aware that the question of possible
18 punishment is the province of the judge, not the jury, and
19 therefore it should not in any way enter into or influence your
20 deliberations. Your duty is to weigh the evidence and not be
21 affected by extraneous considerations.

22 It must be clear to you that if you were to let bias
23 or prejudice or fear or sympathy or any other irrelevant
24 consideration interfere with your thinking, there would be a
25 risk that you would not arrive at a true and just verdict. So

DblQnar4

Charge

1 do not be guided by anything except clear thinking and calm
2 analysis of the evidence.

3 The two defendants here, Jover Naranjo and Luperio
4 Naranjo, Sr., are charged with several federal crimes about
5 which I will instruct you shortly. Please bear in mind,
6 however, that the charges or counts, as they are called, are
7 not themselves evidence of anything.

8 The defendants have pleaded not guilty, and you must
9 consider the evidence against each of them individually. To
10 prevail against a given defendant on a given charge, the
11 government must prove each essential element of that charge
12 beyond a reasonable doubt as to that defendant. If the
13 government succeeds in meeting this burden, your verdict should
14 be guilty on that charge. If it fails, your verdict should be
15 not guilty on that charge. The burden never shifts to any
16 defendant for the simple reason that the law presumes a
17 defendant to be innocent and never imposes upon a defendant in
18 a criminal case the burden of or duty of calling any witness or
19 producing any evidence.

20 Since in order to convict a given defendant of a given
21 charge, the government is to prove that charge against that
22 defendant beyond a reasonable doubt. The question then is what
23 is a reasonable doubt? The words almost define themselves. It
24 is a doubt based upon reason. It is a doubt that a reasonable
25 person has after carefully weighing all the evidence. It is a

DblQnar4

Charge

1 doubt that would cause a reasonable person to hesitate to act
2 in a matter of importance in his or her personal life. Proof
3 beyond a reasonable doubt must be, therefore, be proof of a
4 convincing character that a reasonable person would not
5 hesitate to rely upon in making an important decision.

6 A reasonable doubt is not caprice or whim. It is not
7 speculation or suspicion. It is not an excuse to avoid the
8 performance of an unpleasant duty. The law does not require
9 that the government prove guilt beyond all possible or
10 imaginable doubt. Proof beyond a reasonable doubt is
11 sufficient to convict.

12 If, after fair and impartial consideration of the
13 evidence, you have a reasonable doubt as to defendant's guilt
14 with respect to a particular charge against him, you must find
15 the defendant not guilty of that charge. On the other hand,
16 if, after fair and impartial consideration of all the evidence,
17 you are satisfied beyond a reasonable doubt of a defendant's
18 guilt with respect to a particular charge against him, you
19 should not hesitate to find that defendant guilty of that
20 charge.

21 In deciding whether the government has met its burden
22 of proof, you may consider both direct evidence and
23 circumstantial evidence.

24 Direct evidence is evidence that proves a disputed
25 fact directly. For example, where a witness testifies to what

DblQnar4

Charge

1 he or she saw, heard or observed, that is called direct
2 evidence.

3 Circumstantial evidence is evidence that tends to
4 prove a disputed fact by proof other facts. To give a simple
5 example, suppose that when you came into the courthouse today,
6 the sun was shining and it was a nice day, but the courtroom
7 blinds were drawn, and you could not look outside. Then later,
8 as you were sitting here, someone walked in with a dripping wet
9 umbrella, and, soon after, somebody else walked in with a
10 dripping wet raincoat. Now, on our assumed facts, you cannot
11 look outside the courtroom, and you cannot see whether it is
12 raining. So you have no direct evidence of that fact. But, on
13 the combination of the facts about the umbrella and the
14 raincoat, it would be reasonable for you to infer that it had
15 begun raining.

16 That is all there is to circumstantial evidence.
17 Using your reason and experience, you infer from established
18 facts the existence or the non-existence of some other fact.
19 Please note, however, that it is not a matter of speculation or
20 guess -- it is a matter of logical inference.

21 The law makes no distinction between direct and
22 circumstantial evidence. Circumstantial evidence is of no more
23 or less value than direct evidence, and you may consider either
24 or both and may give them such weight as you conclude is
25 warranted.

DblQnar4

Charge

1 It must be clear to you by now that counsel for the
2 government and counsel for the defendants are asking you to
3 draw very different conclusions about various factual issues in
4 the case. Deciding these issues will involve making judgments
5 about the testimony of the witnesses you have listened to and
6 observed. In making these judgments, you should carefully
7 scrutinize all the testimony of each witness, the circumstances
8 under which each witness testified, and any other matter in
9 evidence that may help you decide the truth and the importance
10 of each witness's testimony.

11 Your decision of whether to believe a witness may
12 depend on how that witness impressed you. How did the witness
13 appear? Was the witness candid, frank and forthright, or did
14 the witness seem to be evasive or suspect in some way? How did
15 the way the witness testified on direct examination compare
16 with how the witness testified on cross-examination or in prior
17 testimony? Was the witness consistent or contradictory? Did
18 the witness appear to know what he or she was talking about?
19 Did the witness strike you as someone who was trying to report
20 his or her knowledge accurately? These are examples of the
21 kinds of commonsense questions you should ask yourselves in
22 deciding whether a witness is, or is not, truthful.

23 How much you choose to believe a witness may also be
24 influenced by the witness's bias. Does the witness have a
25 relationship with the government or a defendant that may affect

DblQnar4

Charge

1 how he or she testified? Does the witness have some incentive,
2 loyalty or motive that might cause him or her to shade the
3 truth? Does the witness have some bias, prejudice or hostility
4 that may cause the witness to give you something other than a
5 completely accurate account of the facts he or she testified
6 to?

7 In this regard, you have heard testimony from
8 cooperating witnesses who testified that they have entered into
9 agreements to cooperate with the government. The law permits
10 the use of testimony from cooperating witnesses; indeed, such
11 testimony, if found truthful by you, may be sufficient in
12 itself to warrant conviction if it convinces you of a given
13 defendant's guilt beyond a reasonable doubt. However, the law
14 requires that the testimony and motives of a cooperating
15 witness be scrutinized with particular care and caution. After
16 carefully scrutinizing the testimony of a cooperating witness
17 and taking account of its special features, you may give it as
18 little or as much weight as you deem appropriate.

19 As to all witnesses, you should consider whether a
20 witness had an opportunity to observe the facts he or she
21 testified about. Also, as to all witnesses, you should
22 consider whether the witness's recollection of the facts stands
23 up in light of the other evidence in the case.

24 In other words, for all witnesses, what you must try
25 to do in deciding credibility is to size up a person just as

DblQnar4

Charge

1 you would in any important matter where you are trying to
2 decide if a person is truthful, straightforward and accurate in
3 his or her recollection.

4 The defendants did not testify in this case. Under
5 our Constitution, a defendant has no obligation to testify or
6 to present any evidence, because it is the government's burden
7 to prove a defendant guilty beyond a reasonable doubt. A
8 defendant is never required to prove that he or she is
9 innocent.

10 Therefore, you must not attach any significance to the
11 fact that the defendants did not testify. No adverse inference
12 against the defendants may be drawn by you because they did not
13 take the witness stand, and you may not consider it against the
14 defendants in any way in your deliberations in the jury room.

15 With these preliminary instructions in mind, let us
16 now turn to the specific charges against the defendants Jover
17 Naranjo and Luperio Naranjo, Sr. Count One charges the
18 defendants with conspiracy to commit mail fraud, but we will
19 first discuss Count Two which charges the defendants with the
20 substantive crime of mail fraud.

21 In order to convict a given defendant of mail fraud,
22 the government must prove beyond a reasonable doubt each of
23 three elements as to that defendant:

24 First, that the defendant devised a fraudulent scheme;

25 Second, that that defendant did so knowingly and

DblQnar4

Charge

1 willfully and with a specific intent to defraud; and,

2 Third, that at least one mailing occurred in the
3 execution of that scheme.

4 As to the first element, a scheme to defraud is a plan
5 or design to obtain money or property by means of one or more
6 false or misleading statements of a material fact. A statement
7 is false if it is an outright lie. A statement is misleading
8 if it is true as far as it goes but creates a false impression
9 by omitting material information necessary to correct the false
10 impression. A statement is material if it relates to a fact
11 that a reasonably prudent person would consider important in
12 making a decision to transfer money or property.

13 Here, specifically, the government alleges, and the
14 defendants deny, that defendants devised a scheme to obtain
15 payment under a federally funded demolition contract without
16 paying workers the required prevailing wage. In this regard,
17 federal law requires that the workers employed on construction
18 projects, funded, at least in part, with federal money, must be
19 paid no less than the prevailing wage for similar workers in
20 the area, an amount determined by the U.S. Secretary of Labor.
21 Further, this law requires that contractors and subcontractors
22 on such projects submit weekly payroll statements with respect
23 to the wages and benefits paid to each employee.

24 As to the second element -- that the defendant you are
25 considering participated in the scheme knowingly and with a

DblQnar4

Charge

1 specific intent to defraud -- to act knowingly means to act
2 consciously and deliberately rather than mistakenly or
3 inadvertently; but in this context, it also means that the
4 defendant had knowledge that he was participating in a
5 fraudulent scheme. It is not enough that the defendant you are
6 considering may have participated in a fraudulent scheme
7 carelessly, negligently or otherwise unknowingly. He must do
8 so knowingly. Similarly, to act willfully, and with a specific
9 intent to defraud, requires that the given defendant you are
10 considering purposely intended to obtain payment under a
11 demolition contract without paying workers the required
12 prevailing wage.

13 As to the third element -- that in the execution of
14 the scheme to defraud at least one mailing was made (including
15 in this category not only U.S. mails but also private
16 interstate carriers like Federal Express) -- it is not
17 necessary that the use of the mails itself contained a
18 fraudulent representation; rather, it is sufficient if it was
19 used to further or assist in carrying out the scheme to defraud
20 in any respect. Also, to cause the use of the mails, it is not
21 necessary for a given defendant to be directly or personally
22 involved in sending the mail, so long as the mailing was
23 reasonably foreseeable in the execution of the scheme to
24 defraud. The mailing must, however, either come from or go to
25 somewhere in the Southern District of the New York. In this

DblQnar4

Charge

1 regard, I instruct you that Manhattan and the Bronx are within
2 the Southern District of New York.

3 In addition to the substantive mail fraud count, Count
4 Two, both defendants are also charged with conspiracy to commit
5 mail fraud, Count One. In order for the defendants you are
6 considering to be guilty of conspiracy, the government must
7 prove beyond a reasonable doubt each of the following two
8 elements:

9 First, that such a conspiracy existed; and,

10 Second, that the defendant you are considering
11 knowingly and willfully joined the conspiratorial agreement and
12 thereby became a member of the conspiracy.

13 Starting with the first element, what is a conspiracy?
14 A conspiracy is an agreement, or an understanding, of two or
15 more persons to accomplish by concerted action one or more
16 unlawful purposes. In this count, the unlawful purpose alleged
17 to be the object of the conspiracy is the mail fraud scheme
18 previously discussed. The conspiracy alleged here is therefore
19 an agreement to commit the scheme to defraud as previously
20 described. Also, please bear in mind that conspiracy is an
21 entirely distinct and separate offense from the actual mail
22 fraud. The actual commission of the object of the conspiracy
23 is not an essential element of the crime of conspiracy.
24 Rather, the government is required to prove beyond a reasonable
25 doubt only two or more persons, in some way or manner,

DblQnar4

Charge

1 explicitly or implicitly, came to an understanding to
2 accomplish the unlawful objective of mail fraud.

3 Further, while it is charged that the alleged
4 conspiracy to commit mail fraud began in or around August 2009
5 and continued up to in or around February 2010, it is not
6 essential that the government prove that the conspiracy started
7 and ended on those specific dates or that it existed throughout
8 that period. Rather, it is sufficient to satisfy the first
9 element that you find that in fact a conspiracy was formed and
10 that it existed for any time within the charged period.

11 If you conclude that the government has proved beyond
12 a reasonable doubt that the charged conspiracy existed, you
13 must then consider the second essential element, which is that
14 the defendant you are considering intentionally joined and
15 participated in the conspiracy. To prove this element, the
16 government must prove beyond a reasonable doubt that a given
17 defendant entered into the conspiracy to commit mail fraud and
18 did so knowingly and willfully.

19 To act knowingly means in this context to act
20 consciously and deliberately rather than mistakenly or
21 inadvertently; and to act willfully in this context means to
22 act voluntarily, purposely and with an intent to defraud.
23 Thus, a defendant enters into a conspiracy knowingly and
24 willfully if he joins the conspiracy deliberately, purposefully
25 and with an intent to defraud.

DblQnar4

Charge

1 If you find beyond a reasonable doubt that the
2 defendant you are considering joined in the charged conspiracy
3 and did so knowingly and willfully, then the second element is
4 satisfied.

5 In this regard, it is not necessary that the defendant
6 be fully informed of all the details of the conspiracy in order
7 to justify an inference of participation on his part. Nor does
8 the defendant need to know the full extent of the conspiracy or
9 all its participants. It is not necessary that defendant
10 receive any monetary benefit from participating in the
11 conspiracy. All that is necessary is proof beyond a reasonable
12 doubt that a defendant knowingly and willfully joined in the
13 conspiracy for purpose of furthering its unlawful purpose.

14 The defendant also need not have joined the conspiracy
15 at the outset. The defendant may have joined it at any time in
16 its progress, and he will still be held responsible for what
17 was done before he joined, as well as what was done during his
18 participation in the conspiracy. The law does not require that
19 each conspirator have an equal role in the conspiracy. Even a
20 single act may be sufficient to draw a defendant within the
21 ambit of the conspiracy if it meets the essential requirements
22 I have described.

23 However, I want to caution you that the mere
24 association by one person with another person does not make
25 that first person a member of the conspiracy even when coupled

DblQnar4

Charge

1 with knowledge that the second person is taking part in a
2 conspiracy. Mere presence at the scene of a crime, even
3 coupled with the knowledge that a crime is taking place, is not
4 sufficient to support a conviction. In other words, knowledge
5 without participation is not sufficient. What is necessary is
6 that the defendant you are considering participated in the
7 conspiracy with knowledge of its unlawful purpose and with
8 intent to aid in the accomplishment of its unlawful purpose.

9 In short, in order to satisfy the second essential
10 element of the conspiracy charge, you must find beyond a
11 reasonable doubt that the defendant you are considering, with
12 an understanding of the unlawful character of the charged
13 conspiracy, knowingly and willfully joined and participated in
14 the conspiracy for the purpose of furthering its unlawful
15 object.

16 Finally, in addition to these two elements, you must
17 also find at least one act in furtherance of the conspiracy
18 occurred in the Southern District of New York.

19 Count Three charges both defendants with conspiracy to
20 commit witness tampering, and Count Four charges both
21 defendants with substantive witness tampering. We will
22 consider the substantive offense first.

23 Count Four charges that the defendants instructed
24 Enviro & Demo Masters' employees to misrepresent their work
25 schedules, pay rates and/or identities to the U.S. Department

DblQnar4

Charge

1 of Labor or to hide from the labor department's investigators,
2 after the defendants were aware that Enviro & Demo Masters was
3 under investigation for violating the prevailing wage laws. In
4 order to sustain its burden of proof with respect to this
5 charge, the government must prove each of the following two
6 elements beyond a reasonable doubt:

7 First, that the defendant you are considering at
8 sometime between around December 2009 and around February 2010,
9 corruptly persuaded at least one employee to hide from the
10 labor department's investigators or to misrepresent the
11 employee's work schedule, pay rate and/or identity; and

12 Second, that the defendant did so knowingly and with
13 an intent to influence, delay or prevent the testimony of such
14 employee in an official proceeding.

15 As to the first element, corruptly persuaded means
16 persuading for an unlawful purpose.

17 As to the second element, an official proceeding
18 includes a labor department investigation.

19 In addition, the government must prove either that the
20 efforts to influence or prevent testimony occurred in the
21 Southern District of New York or that the official proceeding
22 was to be conducted in this district.

23 In addition to the witness tampering count, Count
24 Four, both defendants are also charged with a conspiracy to
25 commit witness tampering, Count Three. In order for a given

DblQnar4

Charge

1 defendant to be guilty of a conspiracy to commit witness
2 tampering, the government must prove beyond a reasonable doubt
3 the same elements of a conspiracy discussed above in
4 instruction number 10 concerning conspiracy to commit mail
5 fraud, except that here the object of the conspiracy must be
6 the witness tampering described in instruction number 11.

7 One defendant, Jover Naranjo, is also charged in Count
8 Five with making false statements to government agents.
9 Specifically, this count charges that between August 2009 and
10 February 2010, Jover Naranjo submitted false certified payroll
11 reports that misrepresented the identities of certain employees
12 working on the Ciena Project, the hours employees worked, and
13 the wages employees were paid. In order to sustain its burden
14 of proof with respect to this charge, the government must prove
15 each of the following three elements beyond a reasonable doubt:

16 First, that at some point between August 2009 and
17 around February 2010, Jover Naranjo knowingly made a false
18 statement to a government agent in the Southern District of New
19 York;

20 Second, that Jover Naranjo knew that the statement was
21 false; and

22 Third, that the statement was material and related to
23 a matter within the jurisdiction of a department or agency of
24 the United States -- here, the Department of Labor.

25 As to the first element, the government need prove

DblQnar4

Charge

1 only that a single false statement was made to a government
2 agent. If such a false statement was made, and if it was made
3 in the Southern District of New York, that would satisfy the
4 first element.

5 As to the second element, the government must prove
6 that Jover Naranjo knew that the statement was false at the
7 time he made the statement.

8 As to the third element a statement is material if it
9 could have influenced a government agency's decision or
10 activities. In this regard, it is not necessary that the
11 Department of Labor actually relied on the statement; rather,
12 it is sufficient if it reasonably could have relied on the
13 statement. Moreover, a statement relates to a matter within
14 the Department of Labor's jurisdiction if it concerns an
15 authorized function of the department. The statement need not
16 be made directly to the Department of Labor in order to relate
17 to a matter within its jurisdiction; it is sufficient that the
18 statement concerns an authorized function of the Department of
19 Labor. Here, the Department of Labor is an agency of the
20 United States and its authorized functions include the
21 enforcement of federal laws concerning the payment of
22 prevailing wages.

23 Finally, both defendants are charged in Count Six with
24 aggravated identity theft. Specifically, the government
25 alleges that each defendant used the personal identification

DblQnar4

Charge

1 information of another person in order to commit one or more of
2 the crimes we have discussed. To convict the defendant you are
3 considering on this charge, the government must prove beyond a
4 reasonable doubt each of the following three elements:

5 First, that the defendant you are considering
6 possessed the personal identification information of another
7 person, such as the person's name, Social Security number, date
8 of birth, driver's license, alien registration number,
9 government passport number, employer or taxpayer identification
10 number;

11 Second, that the defendant you are considering used
12 the information to help commit one or more of the substantive
13 mail fraud, mail fraud conspiracy or false statement offenses
14 discussed above; and

15 Third, that the defendant you are considering did so
16 knowingly and intentionally and without lawful authority.

17 As to the first element, the government must prove
18 both that a means of identification was that of an actual
19 person and that the defendant you are considering knew that the
20 means of identification was that of an actual person.

21 As to the second element, it is not necessary that you
22 find the means of identification was used, transferred or
23 possessed in furtherance of all the crimes of substantive mail
24 fraud, mail fraud conspiracy and false statements. It is
25 sufficient if you find beyond a reasonable doubt that the

DblQnar4

Charge

1 defendant you are considering used, transferred or possessed
2 the means of identification in connection with any one of those
3 three crimes.

4 Finally, as to the third element, a defendant acts
5 without lawful authority either when he uses a means of
6 identification without the consent or knowledge of the person
7 or when he uses the identification in furtherance of a crime
8 even with the person's consent.

9 You will shortly retire to the jury room to begin your
10 deliberations. As soon as you get to the jury room, please
11 select one of your number as the foreperson to preside over
12 your deliberations and to serve as your spokesperson if you
13 need to communicate with the Court.

14 You will be bringing with you in the jury room a copy
15 of my instructions of law and a verdict form on which to record
16 your verdict.

17 Let me pause there for a minute, ladies and gentlemen,
18 and show you the verdict form. It is a simple two-page
19 document, and for each count as to each defendant, you will
20 check the box guilty or not guilty. So, there are altogether
21 six charges against Jover Naranjo and five against Luperio
22 Naranjo, so there will be eleven questions in all that you will
23 have to determine guilty or not guilty.

24 When you reach your verdict, your foreperson will sign
25 the verdict, date it, fold it and seal it in this envelope

DblQnar4

Charge

1 cleverly marked "verdict" and that will be brought out here to
2 me and I will not open it until you are all back here in the
3 courtroom, and then it will be opened and read to you, and you
4 will be asked to individually affirm that that is your verdict.
5 The reason we go through all of those particulars is to be
6 absolutely sure that we have your verdict as you have reached
7 it.

8 So, let's go back to the instructions.

9 If you want any of the testimony provided, that can
10 also be done. I'm sorry, I forgot to mention, in addition, we
11 will send into the jury room all the exhibits that were
12 admitted into evidence. If you want any of the testimony
13 provided, that can also be done either in transcript or
14 read-back form, but please remember that it is not always easy
15 to locate what you might want, so be as specific as you
16 possibly can be in requesting portions of the testimony.

17 Any of your requests -- in fact, any communication
18 with the Court -- should be made to me in writing, signed by
19 your foreperson, and given to the marshal who will be available
20 outside the jury room throughout your deliberations. After
21 consulting with counsel, I will respond to any question or
22 requests you have as promptly as possible, either in writing or
23 by having you return to the courtroom so that I can speak with
24 you in person.

25 You should not, however, tell me or anyone else how

DblQnar4

Charge

1 the jury stands on any issue until you have reached your
2 verdict and recorded it on your verdict form. As I have
3 already explained, the government to prevail on a given charge
4 against a given defendant must prove each essential element of
5 that charge as to that defendant beyond a reasonable doubt. If
6 the government carries this burden, you should find the
7 defendant guilty of that charge. Otherwise, you must find the
8 defendant not guilty of that charge.

9 Each of you must decide the case for yourself, after
10 consideration with your fellow jurors, of the evidence in the
11 case, and your verdict must be unanimous. In deliberating,
12 bear in mind that while each juror is entitled to his or her
13 opinion, each should exchange views with his or her fellow
14 jurors. That is the very purpose of jury deliberation -- to
15 discuss and consider the evidence, to listen to the arguments
16 of fellow jurors, to present your individual views, to consult
17 with one another, and to reach a verdict based solely and
18 wholly on the evidence.

19 If, after carefully considering all of the evidence
20 and the arguments of your fellow jurors, you entertain a
21 conscientious view that differs from the others, you are not to
22 yield your view simply because you are outnumbered. However,
23 you should not hesitate to change your opinion which, after
24 discussion with your fellow jurors, now appears to you
25 erroneous. In short, your verdict must reflect your individual

DblQnar4

Charge

1 views, and must also be unanimous.

2 This completes my instructions of law.

3 All previous objections to the Court's charge are
4 deemed to have been remade at this time and to have been
5 denied.

6 Is there any other reason why counsel needs to
7 approach the side bar?

8 MR. JACOBS: No, your Honor.

9 MR. DONALDSON: No, your Honor.

10 MR. BURKE: No, Judge.

11 THE COURT: So, ladies and gentlemen, after you start
12 your deliberations, you will continue to go as long as you
13 need. You can take as little or as long as you need to reach a
14 verdict, but if at 5:00 you haven't reached a verdict, you
15 should simply leave the jury room and go home, and come back at
16 9:00 a.m. tomorrow. Whoever is your foreperson will be in
17 charge of making sure that you don't start your deliberations
18 again until all 12 of you are back in the jury room.

19 I say all 12, because at this point the one part of
20 this process I don't like is we have to excuse our alternate
21 juror. However, you're not off the hook yet because if any
22 juror were, God forbid, to take sick, we would have to call you
23 back and start deliberations all again with you as one of the
24 regular jurors. So, as a result of that, please do not discuss
25 the case even now, even after you are excused, with anyone. My

DblQnar4

Charge

1 courtroom deputy will contact you when the jury has reached a
2 verdict and the case is over, and then, of course, you are
3 free, but until then you are still on call. With that, thank
4 you so much for your service, and if you would go back into the
5 jury room and get your belongings and leave before the rest of
6 the jury reenters, that would be appreciated.

7 (Alternate juror excused)

8 THE COURT: I am handing the verdict form to my
9 courtroom deputy to give to the jury. I will ask counsel to
10 get the exhibits ready to go in promptly after the jury is
11 excused.

12 So we will swear in the marshal.

13 (Marshal sworn)

14 THE DEPUTY CLERK: Jurors, please follow the marshal.

15 (At 2:52 p.m. the jury retired to deliberate)

16 (Jury not present)

17 THE COURT: Please be seated.

18 So, as soon as possible, the government should gather
19 the exhibits, show them to defense counsel to make sure
20 everything is correct, and then give them to my courtroom
21 deputy who will give them to the jury. That needs to be done
22 extremely promptly.

23 As soon as that is over --

24 MR. JACOBS: They're ready, Judge.

25 THE COURT: Very good. That qualifies as extremely

DblQnar4

Deliberations

1 promptly. In fact, even before I talk about anything else,
2 let's have my courtroom deputy take them back.

3 MR. JACOBS: Judge, I will just say we offered defense
4 counsel the opportunity to look at them this morning. I'm not
5 sure if they have, but if they would like to, they may before
6 they go back.

7 MR. BURKE: We trust them, Judge.

8 MR. DONALDSON: I have, yes, I think they're good.
9 They're trustworthy guys.

10 THE COURT: Very good.

11 MR. JACOBS: I also think I removed the exhibit list
12 that had been sitting on the top. Let me just confirm I've
13 removed it.

14 THE COURT: I have a bench trial that is under way
15 that is going to resume in approximately five minutes. So you
16 will need to vacate those tables. You can leave your stuff
17 there, but during the time the jury is deliberating, I want at
18 least one lawyer for each party to always be on this floor.
19 You don't have to be in the courtroom. You can be out in the
20 hallway. You cannot be on any other floor. You cannot be
21 anywhere else but on this floor, and that's so that when the
22 jury sends in a note, we can immediately address the note and
23 not go looking for you.

24 If at 5:00 the jury has not reached a verdict, you
25 are, of course, free to leave, and we will see you again at

DblQnar4

Deliberations

1 9:00 tomorrow morning.

2 Anything that counsel needs to raise with the Court?

3 Very good. I will see you then.

4 (Recess pending verdict)

5 (In open court; jury not present)

6 (At 4:12 p.m. a note was received from the jury)

7 THE COURT: We've received a note. I'm going to mark
8 this jury note number 9, because although it's the first note
9 since the deliberations began, we have various notes from the
10 jurors.

11 It reads as follows: As it relates to mail fraud, can
12 you explain the definition of "devised a fraudulent scheme"
13 perhaps through an explanation.

14 Being by nature a pedant, I can't help but note the
15 tautology between "can you explain" and "perhaps through an
16 explanation."

17 In any event, nevertheless, we want to help the jury.

18 So here is my proposed response, and then I will hear
19 from counsel.

20 To the jury: Thank you for the note. To "devise" a
21 fraudulent scheme means either to originate such a scheme or to
22 knowingly participate in such a scheme.

23 I think that's all that is necessary, but let's hear
24 from counsel. I'll read it one more time.

25 To the jury: Thank you for your note. To devise a

DblQnar4

Deliberations

1 fraudulent scheme means either to originate such a scheme or to
2 knowingly participate in such a scheme.

3 Any objections from the government?

4 MR. JACOBS: No, your Honor.

5 THE COURT: Any objections from defense counsel?

6 MR. DONALDSON: Your Honor, my only issue with that is
7 that when you talk about the word devise, I could see where the
8 originate comes from, but when you say participate --

9 THE COURT: Yes. So, there's a history here which
10 goes back to 1872, so I perhaps have a little bit more
11 familiarity with it than you.

12 So the mail fraud statute was enacted in 1872, and
13 they used the term devise in the 19th century sense, but that
14 would be closer to originate than to participate. But
15 subsequently through many decisions of both the Supreme Court
16 and lesser courts, it was brought in so that it became clear so
17 that anyone who joined a scheme in a sense, being similar to a
18 conspiracy, would be said to have helped devise it. It's also
19 roughly comparable to an aider-and-abettor-type situation. And
20 these cases mostly came up in the situation where someone who
21 was not themselves intent on fraud put together something that
22 acted as if it were a fraud, so-called constructive fraud, and
23 then someone else seeing the potential there joined. And the
24 defense was raised, well, someone else devised the scheme, and
25 the answer was, no, that's not really the limit on the word

DblQnar4

Deliberations

1 devise. It is a given if you knowingly participate in the
2 scheme knowing it's a fraudulent scheme, then you can be said
3 to have helped devise it.

4 So that is sort of how the case law played out. This
5 was mostly, as undoubtedly you know, between 1872 and 1909, and
6 it's briefly referred to in the obscure *Duquesne Law Review*
7 article Mail Fraud Statute (Part I) by some guy named Rakoff.

8 So, anyway, now that I really played pedant for a day,
9 that is how participation comes to be part of it.

10 So, any objection from defense counsel?

11 MR. DONALDSON: With that, no.

12 MR. BURKE: No.

13 THE COURT: OK. Very good. So I will have my
14 courtroom deputy make a copy of this and docket it as Court
15 Exhibit 3 and have the original sent in to the jury just as
16 soon as she is done with it.

17 Thank you very much.

18 (Recess pending verdict)

19 (In open court; jury not present)

20 (At 5:11 p.m. a note was received from the jury)

21 THE COURT: The defendants are not here. Counsel were
22 about to leave, but we received from the jury as they were
23 leaving, a note dated -- I'm sorry, a note we've labeled jury
24 note 10.

25 "In the morning we would like the following

DblQnar4

Deliberations

1 transcripts: Antonio Torres, Angel Lejano, Pedro Pablo, Fausto
2 Criollo, Joaquin Pablo, Richard Campoverde, and Kleve Pauto."

3 I guess it should be Clever Pauta, but they forgot the
4 R. I admire their decision in eliminating at least one or two
5 witnesses.

6 So, anyway, here is what you guys have to do before
7 tomorrow morning: Obtain -- or you may already have it -- a
8 copy of the transcript. You don't have to excise objections.
9 You have to excise any side bars. They may already be excised.
10 If not, work with the court reporters to get a copy that
11 doesn't have the side bars. I don't care about anything else.
12 Then we need to make 12 copies of each of these. I will give
13 that privilege to the government.

14 So all that we need from defense counsel is to stick
15 around long enough so you can see the one copy of each of
16 these, and the government will need to take the steps
17 necessary. Then before 9:00 tomorrow, just bring the entire
18 package -- you may need that cart again -- to my courtroom
19 deputy who will have them waiting for the jurors when they
20 arrive. All right?

21 MR. DONALDSON: Judge, in any instances where there is
22 an objection is sustained, move to strike.

23 THE COURT: The jury has already heard from my
24 instructions that they are to disregard on that. It's no
25 different seeing it in print than hearing it live. They know

DblQnar4

Deliberations

1 they are to disregard it. To take that out will add many
2 hours, because it not only requires either you have to do it
3 through a black pencil or you have to wait until our court
4 reporters, who are busy doing other things, are available to do
5 it.

6 If, however, you want to do it, I don't want to
7 deprive you of that opportunity, but I'm not going to ask the
8 government to do that. And I'm not going to ask Mr. Donaldson
9 to do that unless he wants to, but, Mr. Burke, if you want to
10 go through each and every one of those transcripts and
11 white-out or black-out any situation where there's objection
12 sustained or -- the number of cases involving an actual strike
13 was about two in the entire thing.

14 MR. DONALDSON: To be quite frank, Judge, there is
15 really only one situation that I'm concerned about, and that's
16 on my brilliant cross-examination.

17 THE COURT: That doesn't limit the field, does it?

18 MR. DONALDSON: It sure does, where I bring out -- I'm
19 asking someone about their fake identity, and it's kind of a
20 run-on answer, and he says, "Oh I got that" -- I'm paraphrasing
21 now -- "I got that from Luperio Naranjo, Jr." or something to
22 that effect, and I object.

23 THE COURT: That's fair enough. If you want to find
24 that and white it out, and I will even ask the government to
25 help you white it out, but you have to find it. Maybe you can

DblQnar4

Deliberations

1 work with the court reporters downstairs.

2 MR. DONALDSON: I have transcripts. I think I can
3 probably find it in five minutes.

4 THE COURT: That's fine. I have no objection if
5 that's the only one you care about, it can be whited out.

6 MR. JACOBS: Judge, could we also send the jury a note
7 indicating that Pedro Pablo was not a witness at the trial.
8 They've asked for seven individuals. Six of them were
9 witnesses at trial. Nobody named Pedro Pablo testified. It's
10 Joaquin Pablo's brother. There was some testimony was about
11 him, but he was not a witness.

12 THE COURT: OK. I will deal with that tomorrow
13 morning, but you will submit all the others, and then I'll send
14 in a note after running it by all of you at 9:00 a.m. that says
15 "Pedro Pablo was referred to in testimony, but he was not
16 himself a witness, so there is no transcript of his testimony."

17 I'm happy to do that. I just don't want to take the
18 time now. I just have ten minutes more before we move on to
19 another matter. Thanks so much.

20 (Adjourned to November 22, 2013, at 9:00 a.m.)